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Attorneys for Defendant

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In re:

MARC JOHN RANDAZZA,  
  
Debtor.

Case No.: BK-S-15-14956-abl  
Chapter 11

EXCELSIOR MEDIA CORP., a Nevada  
corporation; and LIBERTY MEDIA  
HOLDINGS, LLC, a Nevada limited liability  
company,

Plaintiffs,

v.

MARC JOHN RANDAZZA, an individual,  
  
Defendant.

Adv. No. 15-01193-abl

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO DISMISS  
SECOND AMENDED COMPLAINT**

Date: September 20, 2016  
Time: 9:30 a.m.

Defendant, Marc John Randazza (the “Defendant”), by and through his attorneys, the law firm of Larson & Zirzow, LLC, hereby respectfully requests that the Court take judicial notice pursuant to Fed. R. Evid. 201 of the following in support of his *Motion to Dismiss Second Amended Complaint* (the “Motion”) [Adv. ECF No. 75].<sup>1</sup>

<sup>1</sup> Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the Motion.

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**The Fee Litigation: MJRPA v. LMH, and the MJRPA Settlement Agreement**

1. On December 9, 2012, as later amended, Marc J. Randazza P.A. d/b/a Randazza Legal Group ("MJRPA") filed an action against Liberty Media Holdings, LLC, a California limited liability company ("LMH") in the Eighth Judicial District Court, Clark County, Nevada, being Case No. A-12-673275-C, therein alleging claims for monies due for legal services rendered in the Oron Litigation (the "Fee Litigation"). Copies of the complaint and amended complaint filed in the Fee Litigation in Nevada State Court are attached hereto as **Exhibit 1** and **Exhibit 2**, respectively.

2. On March 28, 2013, LMH answered the amended complaint in the Fee Litigation, and filed a counterclaim against MJRPA alleging malpractice claims against MJRPA arising out its representation of LMH in the Oron Litigation, which are similar to those asserted against the Defendant in this Adversary Proceeding. A copy of LMH's answer filed in the Fee Litigation in Nevada State Court is attached hereto as **Exhibit 3**.

3. On June 15, 2016, the Debtor filed a *Motion to Approve Settlement Pursuant to Bankruptcy Rule 9019* (the "MJRPA Settlement Motion") [ECF No. 148] with the Bankruptcy Court, which sought court approval of a proposed Settlement Agreement and Mutual Release (the "MJRPA Settlement Agreement") by and between Excelsior, LMH and Gibson (collectively, the "LMH Parties") on the one hand, and MJRPA, the Defendant, and others on the other hand (collectively, the "RLG Parties"). The MJRPA Settlement Agreement principally involved the resolution of any and all alleged liability of MJRPA, including but not limited to arising out of the Fee Litigation in Nevada state court as against MJRPA. Among other pertinent parts, Paragraph 3 of the MJRPA Settlement Agreement provided that, with the express exception of certain matters as to the Debtor and his personal liability referenced in Paragraph 4, the LMH Parties (as defined therein) were releasing MJRPA, among others, of any and all liability.

4. On July 20, 2016, the Court granted the MJRPA Settlement Motion. On July 22, 2016, the Court entered a written order granting the MJRPA Settlement Motion (the "MJRPA Settlement Order") [ECF No. 157], thereby finding in a fair and equitable compromise pursuant

1 to Fed. R. Bankr. P. 9019. The MJRPA Settlement Order is fully effective and enforceable.  
 2 Moreover, the settlement funds required under that agreement have been paid and the MJRPA  
 3 Settlement Agreement and the releases therein are fully effective and enforceable.

4 5. On August 2, 2016, and as a result of the Bankruptcy Court's approval of the  
 5 MJRPA Settlement Agreement, and indeed, in effectuation of that agreement, the parties filed a  
 6 *Joint Stipulation and Order for Dismissal With Prejudice* in the Fee Litigation in Nevada State  
 7 Court, which that Court has also now entered. A true and correct copy of the foregoing  
 8 dismissal entered by the Nevada State Court in the Fee Litigation is attached hereto as **Exhibit**  
 9 **4**.

#### 10 **Wayne Hoehn (The Righthaven Litigation)**

11 6. MJRPA represented the defendant, Wayne Hoehn ("Hoehn") involving litigation  
 12 against Righthaven. See Righthaven, LLC v. Hoehn, 792 F. Supp. 2d 1138 (D. Nev. 2011).  
 13 Second, the \$55,000 was not awarded for representing Hoehn, but was a distribution for  
 14 administrative expenses on behalf of the Court-appointed receiver. See Righthaven, LLC v.  
 15 Hoehn, 2:11-cv-00050 (D. Nev. Mar. 15, 2013) (ECF Nos. 120, report of receiver; ECF No. 130  
 16 (order adopting report of receiver). Third, it was not the Defendant individually, but his law  
 17 firm, MJRPA, that received the distribution. See id. And fourth, the distribution to MJRPA  
 18 occurred nine (9) months after Defendant's employment with Excelsior terminated. See id.  
 19 Copies of the Righthaven Receiver's report and the court order adopting it as entered by the  
 20 U.S. District Court for the District of Nevada in the above-referenced litigation against  
 21 Righthaven is attached hereto as **Exhibit 5** and **Exhibit 6**, respectively.

#### 22 **The Oron Litigation**

23 7. On or about July 1, 2012, LMH and Oron reached a settlement in the Oron  
 24 Litigation. See SAC ¶ 50. MJRPA successfully obtained an order enforcing the settlement  
 25 agreement on behalf of LMH against Oron. See SAC ¶ 52; Liberty Media Holdings, LLC v. FF  
 26 Magnat Ltd. d/b/a Oron.com, No. 2:12-cv-01057, 2012 WL 3255044 (D. Nev. Aug. 7, 2012).

27 8. Plaintiffs (really LMH) allege that, thereafter, Defendant (really his law firm,  
 28 MJRPA) negotiated a new *potential* settlement agreement with Oron, who was represented by

Valentin Gurvits, Esq. of the Boston Law Group ("Mr. Gurvits"), containing certain terms with which they disagreed. See SAC ¶¶ 53 & 55. Defendant--again, in his capacity as an attorney with MJRPA--presented the terms of the proposed new agreement and with a full opportunity for LMH's principal, Jason Gibson, to review the terms. See id. ¶ 53. Mr. Gibson, LMH's principal, claims that he "discovered" the \$75,000 disbursement, written in plain English, in the draft settlement agreement the Defendant, acting through MJRPA, sent to him for his review. Id. at ¶ 55. Although Plaintiffs misleadingly describe this proposed disbursement "bribe" in order to color these proceedings, in reality the draft proposed agreement stated clearly that certain funds were to be released to Oron's attorney, Mr. Gurvits. A copy of the foregoing document, which was also an exhibit in the pre-petition Arbitration, is attached hereto as **Exhibit 7.**

**Allegations Concerning Defendant's Contact with Co-Counsel  
After His Disengagement from Excelsior and LMH**

9. Even if Defendant, acting on behalf of MJRPA, contacted Philadelphia-based co-counsel more than a week before his actual separation from Excelsior and LMH due to the disputes between those parties and Defendant, see SAC ¶ 65(b), it is undisputed that such co-counsel nonetheless continued to represent LMH through the conclusion of litigation. See Liberty Media Holdings, LLC v. John Does 1-265, No. 2:12-cv-04703 (E.D. Pa. Sept. 5, 2012) (the same attorney who filed the Complaint filed the Notice of Voluntary Dismissal). A copy of the foregoing filings from this litigation in the United States District Court for the Eastern District of Pennsylvania are attached hereto as **Exhibit 8.**

Dated: August 9<sup>th</sup>, 2016.

By: 

LARSON & ZIRZOW, LLC  
ZACHARIAH LARSON, ESQ.  
MATTHEW C. ZIRZOW, ESQ.  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101

Attorneys for Defendant

LARSON & ZIRZOW, LLC  
810 S. Casino Center Blvd. #101  
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# **EXHIBIT 1**

## CIVIL COVER SHEET A - 1 2 - 6 7 3 2 7 5 - C

Clark County, Nevada

VIII

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information**

**Plaintiff(s) (name/address/phone):** MARC J. RANDAZZA  
P.A., 6525 W. Warm Springs Rd., Suite 100, Las Vegas, NV  
89118; (888) 667-1113

**Attorney (name/address/phone):**  
Clyde DeWitt, 6525 W. Warm Springs Rd., 100  
Las Vegas, NV 89118  
(702) 386-1756; fax (702) 441-0308  
ClydeDeWitt@EarthLink.net

**Defendant(s) (name/address/phone):** LIBERTY MEDIA  
HOLDINGS, LLC and JASON GIBSON, 4262 BLUE  
DIAMOND ROAD, SUITE 102-377, Las Vegas, NV 89139.

**Attorney (name/address/phone):**  
Wendy Krincek, 3960 Howard Hughes Pkwy, Suite 300, Las  
Vegas, NV 89169; (702) 862.7726; fax (702) 993.0569  
wkrincek@littler.com

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input checked="" type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<b>Probate</b> <b>Estimated Estate Value:</b> _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<b>Other Civil Filing Types</b> <input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input checked="" type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	

☐ **Appeal from Lower Court** (also check applicable civil case box)  
☐ Transfer from Justice Court  
☐ Justice Court Civil Appeal

☐ **Civil Writ**  
☐ Other Special Proceeding

☐ **Other Civil Filing**  
☐ Compromise of Minor's Claim  
☐ Conversion of Property  
☐ Damage to Property  
☐ Employment Security  
☐ Enforcement of Judgment  
☐ Foreign Judgment – Civil  
☐ Other Personal Property  
☐ Recovery of Property  
☐ Stockholder Suit  
☐ Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88	<input type="checkbox"/> Investments (NRS 104 Art. 8)	<input type="checkbox"/> Enhanced Case Mgmt/Business
<input type="checkbox"/> Commodities (NRS 90)	<input type="checkbox"/> Deceptive Trade Practices (NRS 598)	<input type="checkbox"/> Other Business Court Matters
<input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Trademarks (NRS 600A)	

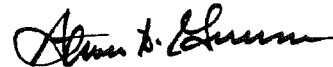
December 5, 2012

Date

/s/ clydedewitt

Signature of initiating party or representative

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12/09/2012 12:52:49 PM



CLERK OF THE COURT

**COMP**

Clyde DeWitt (Nevada Bar No. 9791)  
LAW OFFICES OF CLYDE DeWITT, APC  
6525 W. Warm Springs Road, Suite 100  
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Counsel for Plaintiff,  
Marc J. Randazza, P.A.

**IN THE DISTRICT COURT  
FOR THE EIGHTH JUDICIAL DISTRICT  
CLARK COUNTY, STATE OF NEVADA**

MARC J. RANDAZZA P.A., a Florida  
professional association doing business as  
RANDAZZA LEGAL GROUP,

Plaintiff,

vs.

LIBERTY MEDIA HOLDINGS, LLC, a  
California limited-liability company  
doing business as Corbin Fisher and  
JASSON GIBSON, an individual,

Defendants.

Case No. A-12-673275-C

Dept. No. VIII

**PLAINTIFF'S ORIGINAL  
COMPLAINT FOR FRAUD,  
BREACH OF CONTRACT AND  
UNJUST ENRICHMENT**

**ARBITRATION EXEMPTION  
REQUESTED: DEMAND IN  
EXCESS OF \$50,000.00**

**JURY TRIAL DEMAND**

**[NEV. R. CIV. PROC. 38]**

**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff Marc J. Randazza P.A., d/b/a RANDAZZA LEGAL GROUP,  
based upon knowledge of its own acts and information and belief as to the acts of  
others, brings this Complaint against Defendants Liberty Media Holdings LLC and  
Jason Gibson, and alleges as follows:



## I. INTRODUCTION

This is an action by a law firm to collect costs advanced and fees due from its former organizational client and to secure relief based upon the fraud perpetrated by it through Defendant Jason Gibson (“GIBSON”), who controls it. The law firm accomplished all that was requested by the client; but the former client refuses to pay, has no intention of doing so and never intended to do so at the time of contracting the unpaid work.

Randazza Legal Group (“RLG”) is a nationally recognized law firm, best known for handling high-profile First Amendment, entertainment and intellectual property matters. Defendant Liberty Media Holdings LLC (“LMH”), an adult entertainment company, through GIBSON, who controlled it, hired RLG to represent it in a copyright infringement matter, never intending to pay RLG for its services or reimburse costs advanced. RLG performed excellently in the litigation, obtaining, *inter alia*, a temporary restraining order of the defendant’s funds without a hearing, a settlement of \$550,000, judicial enforcement of that settlement, collection of that amount, and an attorney’s fees award of more than \$131,797.00. LMH never paid RLG for those services and neither it nor GIBSON ever intended to do so.

## II. JURISDICTION AND VENUE

1. Plaintiff seeks damages in excess of \$10,000 against all Defendants. Accordingly, this court has jurisdiction pursuant to Nev. Const. Art. 6 § 6; NEV. REV. STAT. 4.370(1)(A).

2. Venue is proper in this court because Liberty Media Holdings LLC is a California limited liability company with its principal place of business in Clark County, Nevada and GIBSON is a resident and citizen of Clark County, Nevada.

3. Furthermore, the contract that is the subject of this action was formed, was to be performed by all parties and in fact was performed by the plaintiff in



1 Clark County, Nevada. Therefore, venue is proper pursuant to NEV. REV. STAT.  
2 13.010.

3 4. Furthermore, both LMH and GIBSON are residents and citizens of  
4 Clark County Nevada. Therefore, venue is proper pursuant to NEV. REV. STAT.  
5 13.040.

6 5. Accordingly, jurisdiction and venue before this court are proper.  
7

### 8 **III. PARTIES**

#### 9 **A. The Plaintiff**

10 6. Plaintiff, Marc J. Randazza P.A., is a professional association,  
11 organized and existing under the laws of the State of Florida that does business as  
12 Randazza Legal Group ("RLG").

13 7. Well-known nation-wide for its participation and success in  
14 intellectual property and First Amendment matters, as well as other high-profile  
15 disputes widely covered by the media, RLG represents a number of adult  
16 entertainment companies, previously including Liberty Media Holdings, LLC.

17 8. Particular to this action, RLG represented Liberty Media Holdings,  
18 LLC in litigation before the United States District Court for the District of Nevada,  
19 *Liberty Media Holdings LLC v. FF Magnat Limited, d/b/a Oron.com, et al.*, Case  
20 No. 2:12-cv-01057 (D. Nev. 2012) (the "Oron Litigation").

21 9. Additionally, RLG has provided legal services to Liberty Media  
22 Holdings' sibling companies, including Excelsior Media Corporation, Becar  
23 Management LLC, HMF Workforce LLC, and Liberty Media Holdings LLC's  
24 principal and Chief Executive Officer, GIBSON.

25 /

26 /

27 /

28 /

**B. The Defendants**

10. Liberty Media Holdings LLC (“LMH”) is a California limited-liability company with its primary place of business in Clark County, Nevada, and the plaintiff in the Oron Litigation.

11. LMH is a producer of adult entertainment and has been a leading force in the adult industry’s ongoing efforts to combat digital piracy.

12. Since 2009, LMH had retained RLG to further these goals, and frequently used RLG’s services to engage in litigation against users of BitTorrent who unlawfully distributed LMH’s copyrighted content, video-playing “tube” sites that unlawfully displayed LMH’s copyrighted content, and one-click-hosting sites known as “cyber lockers” that also unlawfully distributed LMH’s copyrighted content.

13. Jason Gibson (“GIBSON”) is a natural person who is a resident and citizen of Clark County, Nevada. He wholly controls LMH and, to an unknown extent, owns it.

**IV. FACTS COMMON TO ALL CLAIMS FOR RELIEF****A. The Relationship between RLG and LMH.**

14. RLG and its managing partner, Marc Randazza, are widely-known and nationally recognized attorneys for the adult entertainment industry, particularly in the area of copyright.

15. One of RLG’s longest-standing clients, LMH, routinely used RLG’s services to engage in a variety of intellectual property litigation nationwide.

16. Through RLG, LMH had engaged in litigation coast-to-coast, from Massachusetts, Pennsylvania, Florida, Texas and Wisconsin, to Nevada, Arizona, and California. This strategy was made possible because of the number of law licenses held by RLG’s attorneys.

1 17. RLG's relationship with LMH was facilitated by Marc Randazza's  
2 role as general counsel to LMH and its sister companies, including Excelsior  
3 Media Corporation, Becar Management LLC, and HMF Workforce, LLC. Those  
4 companies all are controlled and, to an unknown extent, owned by GIBSON.

5 18. Because of Marc Randazza's close relationship with LMH, he was  
6 able to leverage his law firm, RLG, to LMH's benefit – offering significant  
7 discounts to LMH on RLG's services in consideration of his ongoing relationship  
8 with the company. LMH was not only fully aware of this arrangement, but  
9 encouraged it and contemplated it within its employment agreement with Marc  
10 Randazza.

11 19. In return, Marc Randazza was able to provide certain discounts on  
12 RLG's rates to LMH on the condition that LMH timely paid for RLG's services,  
13 and that LMH and its sister companies continued to employ Randazza as their  
14 general counsel.

15 20. Since July 2009, Marc Randazza, LMH and RLG enjoyed this  
16 understanding, and it operated as an operating contract among the parties.

17 21. Although this agreement was never reduced to writing, Marc  
18 Randazza, RLG and LMH saw no reason for it to be, as LMH paid RLG's bills and  
19 continued to employ Marc Randazza as its general counsel. See Exhibit 101.

20  
21 **B. The Oron Litigation and Defendants' Fraudulent Inducement.**

22 22. During May and June of 2012, GIBSON and Marc Randazza  
23 extensively discussed the potential costs and merits of the Oren litigation, as that  
24 litigation is described extensively herein.

25 23. On some date in early June of 2012, well prior to June 20, 2012,  
26 GIBSON, on behalf of LMH, specifically requested Marc. Randazza to cause RLG  
27 to commence the Oron Litigation; implied in that request based upon an  
28 unambiguous understanding between the two of them, RLG would pay fees and

1 reimburse advanced costs in connection with prosecuting that litigation as it had  
2 done regularly over a long period of time and without exception with respect to all  
3 other litigation that RLG had prosecuted on LMH.

4 24. At the request of LMH and GIBSON, Marc Randazza had been  
5 researching the defendant in that action, FF Magnat Limited, for more than a year,  
6 and had carefully planned LMH's attack on the company – including the seizure of  
7 its domestic and foreign financial assets.

8 25. On or about June 20, 2012, RLG commenced the Oron Litigation,  
9 filing a Complaint and ex parte motion for temporary restraining order against FF  
10 Magnat Limited. Concurrently, Marc Randazza and other RLG attorneys had  
11 coordinated a similar action seeking a Mareva injunction<sup>1</sup> in Hong Kong to freeze  
12 FF Magnat Limited's assets within the Hong Kong Special Administrative Region  
13 and globally.

14 26. On June 22, 2012, The United States District Court for the District of  
15 Nevada granted LMH's ex parte motion for a temporary restraining order against  
16 FF Magnat Limited's assets. The Court granted this motion without hearing, and  
17 set a further briefing schedule for LMH's desired preliminary injunction against FF  
18 Magnat Limited.

19 27. FF Magnat then moved to withdraw nearly \$400,000 in funds from its  
20 frozen accounts to fund its litigation defense. RLG swiftly opposed this motion,  
21 and the Court allowed FF Magnat Limited to withdraw only \$100,000 for its  
22 litigation defense. RLG successfully opposed all future requests for disbursement  
23 of funds and other monetary relief before both the United States District Court for  
24 the District of Nevada and the United States Court of Appeals for the Ninth  
25 Circuit.

26 /

27  
28 <sup>1</sup> A "Manerva injunction" freezes a defendant's assets.

1        28. On July 1, RLG negotiated a settlement of the Oron Litigation  
2 between LMH and FF Magnat Limited for \$550,000.

3        29. Shortly thereafter, however, FF Magnat began acting contrary to its  
4 settlement agreement with LMH, and claiming that no such agreement had been  
5 reached.

6        30. RLG moved the United States District Court for the District of  
7 Nevada to enforce LMH's settlement agreement with FF Magnat Limited.

8        31. While briefing on RLG's motion to enforce LMH's settlement  
9 agreement progressed, RLG prepared and filed LMH's briefing opposing  
10 Defendant Maxim Bochenko's motion to dismiss for lack of personal jurisdiction,  
11 and an extensive reply brief in support of LMH's motion for preliminary  
12 injunction.

13        32. Almost immediately after those documents were filed, the Court  
14 entered an order on August 7, 2012 granting LMH's motion to enforce its  
15 settlement agreement with FF Magnat Limited, and entering judgment of \$550,000  
16 in LMH's favor against FF Magnat Limited.

17        33. RLG went about seeking to enforce LMH's \$550,000 judgment  
18 immediately. On August 21, 2012 RLG filed a motion seeking an order requiring  
19 PayPal, Incorporated – a third party payment processor holding hundreds of  
20 thousands of dollars of FF Magnat Limited's money which had been frozen under  
21 the Court's order – to pay \$550,000 from FF Magnat Limited's frozen accounts to  
22 LMH, via RLG's trust account.

23        34. That same day, the United States District Court for the District of  
24 Nevada granted RLG's motion and entered an order requiring PayPal to transfer  
25 \$550,000 from FF Magnat Limited's account to LMH.

26        35. RLG then collected those funds for LMH's benefit.

27        36. In addition to the \$550,000 settlement amount, RLG asked for Liberty  
28 to recover the reasonable value of its attorneys' fees and costs.

1        37. On August 10, 2012, RLG moved for more than \$132,000 in  
2 attorneys' fees and costs. RLG's reply briefing was completed on August 28,  
3 2012.

4        38. On September 4, 2012, the United States District Court for the District  
5 of Nevada entered an order granting RLG's motion, and awarding LMH  
6 \$131,797.50 in attorneys' fees. A true and correct copy of this order is attached  
7 hereto as Exhibit 102.

8  
9            **C. LMH Breaches Its Contract with RLG and Completes the Fraud.**

10        39. On August 30, 2012, LMH unilaterally terminated Randazza from his  
11 employment as the company's general counsel.

12        40. On or about August 31, 2012, LMH retained the Greenberg Traurig  
13 law firm to represent it in the Oron Litigation; and RLG signed a substitution of  
14 counsel form Greenberg Traurig supplied to RLG.

15        41. Thereafter, the United States District Court for the District of Nevada  
16 approved LMH's request for substitution of counsel, and Greenberg Traurig  
17 replaced RLG in the Oron Litigation.

18        42. Since August 30, RLG's efforts to have LMH pay the past-due  
19 balance of \$81,433.98 have been unsuccessful.

20        43. By terminating Randazza and failing to make any payments toward  
21 RLG's bills for its legal services in the Oron Litigation, LMH has materially  
22 breached its agreement with RLG; LMH never intended to pay any of those fees.

23        44. GIBSON and LMH had intended to do that since prior to requesting  
24 that RLG to initiate the Oron litigation in June of 2012.

25 /  
26 /  
27 /  
28 /

**FIRST CLAIM FOR RELIEF: FRAUD**

**(Against LMH and GIBSON.)**

45. Plaintiff re-alleges paragraphs 1-45 and incorporates them by reference as if set forth here.

46. LMH and GIBSON fraudulently induced RLG into representing it in the Oron Litigation based on specific and knowing misrepresentations to RLG's principal, Marc Randazza, that LMH would pay RLG for its services.

47. At the time GIBSON made those statements, he knew these representations to be false.

48. Since April 2012, GIBSON had been planning to terminate Marc Randazza as the company's general counsel and deny him his owed severance, reimbursements, and any pending non-discretionary bonuses in order to benefit LMH at Marc Randazza's personal expense, including fees that would be generated by RLG.

49. When RLG filed the Oron Litigation in June 2012, GIBSON was already planning to reassign the Oron Litigation to Greenberg Traurig and terminate Marc Randazza – and RLG – once the case was sufficiently successful.

50. LMH intended to induce RLG to represent LMH in the Oron Litigation without making payment for the services it rendered – demonstrated by LMH and GIBSON's concurrent and subsequent conduct.

51. In order to obtain RLG's assent to the contract and convince RLG to undertake the representation, LMH represented that it would pay RLG's legal fees for representation in the Oron Litigation.

52. Before and during the Oron Litigation, GIBSON had numerous meetings with Greenberg Traurig so that the firm could take over the Oron Litigation from RLG so that LMH could avoid paying RLG for the services.

53. Additionally, GIBSON had numerous meetings with the law firm Littler Mendelson P.C., to discuss the most advantageous manner to terminate



1 Marc Randazza in order to avoid any financial liability to both Marc Randazza and  
2 RLG, in terms of severance, final wages, reimbursements, and RLG's legal fees.

3 54. On August 30, LMH, though GIBSON, unilaterally terminated  
4 Randazza without any payment of severance, reimbursements, or non-discretionary  
5 bonuses which were due upon termination. To date, LMH still has refused to pay  
6 these amounts.

7 55. Moreover, LMH substituted RLG as counsel in the Oron Litigation  
8 with Greenberg Traurig. After the United States District Court for the District of  
9 Nevada approved this substitution, LMH's plan had come to fruition, as it had  
10 obtained the benefit of RLG's services, but without making any payment therefor.

11 56. RLG justifiably relied on GIBSON's representations that LMH would  
12 pay for RLG's services in the Oron Litigation.

13 57. RLG's reliance on GIBSON's representations was reasonable because  
14 of its long-standing relationship with LMH.

15 58. Additionally, LMH had consistently paid RLG's legal fees in  
16 numerous similar disputes in the past – and a number of which were confidentially  
17 resolved pre-litigation and cannot be identified herein – leading RLG to believe  
18 LMH would once again pay its legal bills.

19 59. RLG relied upon these representations. As a result, LMH defrauded  
20 RLG of its legal services, valued in excess of \$81,433.

21 60. Because of Marc Randazza's salaried in-house counsel relationship  
22 with LMH, the value of his services is excluded from this calculation. However,  
23 the United States District Court of Nevada specifically found the market rates of  
24 RLG attorneys Ronald Green and J. Malcolm DeVoy to be reasonable at \$400 per  
25 hour and \$325 per hour, respectively, and further found the market rate of RLG's  
26 legal clerk at \$125 per hour to be reasonable as well.

27 61. LMH has not paid *any* amount owed to RLG and never intended to do  
28 so from the outset; and at present RLG has suffered an injury of \$81,433.98

1 because of its reliance on LMH's fraudulent inducement of RLG's representation  
2 of LMH in the Oron Litigation.

3 62. As LMH's actions through GIBSON were made with malice, fraud,  
4 and oppression, RLG is entitled to punitive damages arising from this conduct.

5 63. Specifically, LMH's fraudulent inducement of RLG's performance in  
6 the Oron Litigation, without any intention to pay RLG for its services, was made  
7 specifically to deprive RLG of payment for the considerable work it poured into  
8 the Oron Litigation – achieving great success for LMH at the cost of many  
9 sleepless nights, foregoing other representations, and prioritizing the Oron  
10 Litigation above other potential matters.

11 64. In return for its service, LMH has refused to pay RLG any of the  
12 funds it is owed. In addition to the fraudulent intent described in the foregoing,  
13 LMH took these actions for no reason other than to harm RLG and to financially  
14 oppress the firm.

15  
16 **SECOND CLAIM FOR RELIEF: BREACH OF CONTRACT**

17 **(Against LMH Only.)**

18 65. Plaintiff realleges paragraphs 1-45 and incorporates them by reference  
19 as if set forth here.

20 66. RLG and LMH had an oral agreement for RLG to provide LMH with  
21 legal representation in the Oron Litigation, as well as in other matters.

22 67. Over many years' course of dealing, LMH solidified this contractual  
23 relationship with RLG, with regular payments for its legal services in a wide range  
24 of legal matters, including copyright infringement litigation.

25 68. LMH materially breached this contract by failing to pay RLG for any  
26 of the legal services it rendered in the Oron Litigation.

27 69. RLG has been damaged by LMH's breach, and suffered \$81,433.98 in  
28 damages due to LMH's breach and non-payment for RLG's legal services.

**THIRD CLAIM FOR RELIEF:**  
**UNJUST ENRICHMENT / QUANTUM MERUIT**  
**(Against LMH Only.)**

70. Plaintiff re-alleges paragraphs 1-45 and incorporates them by reference as if set forth here.

71. In the alternative to RLG's breach of contract claim, Plaintiff brings an unjust enrichment claim in an effort to streamline this litigation.

72. During negotiation, LMH and its sibling companies have adopted unreasonable, inconsistent, and even contradictory positions regarding its liability to RLG for its attorneys' fees.

73. RLG thus expects LMH to disavow any form of contract with the firm, and as a result the firm is entitled to the reasonable value of its attorneys fees. As established by Exhibit 102, the reasonableness of these fees at \$81,433.98 has been adjudicated by the United States District Court for the District of Nevada.

74. By providing extensive legal services to LMH in the Oron Litigation, RLG conferred the benefits of its labor and legal representation onto LMH.

75. LMH benefitted from this representation by achieving a settlement of \$550,000 from FF Magnat Limited, obtaining judicial enforcement of that settlement agreement (including a third party's transfer of FF Magnat Limited's funds into RLG's trust account), and an attorney's fee award of more than \$131,797.00.

76. LMH consumed these services as they were rendered, and retained their benefits – including the favorable orders and decisions RLG obtained for it – without payment, or beseeching the Court to reverse the benefits of RLG's representation.

77. LMH refused to pay RLG for these services, yet has retained the benefits and legal entitlements RLG obtained for LMH.



**ARBITRATION EXEMPTION DEMANDED**

The total of Plaintiffs claims herein, exclusive of interest and costs, which the judge and/or jury is likely to award, exceeds \$50,000. Accordingly, it is exempt from arbitration and Plaintiff demands that exemption. *E.g.*, NEV. ARB. R. 3(A).

Dated: December 5, 2012.

Respectfully Submitted,

LAW OFFICES OF CLYDE DeWITT, APC

By: /s/ clydedewitt .  
Clyde DeWitt

Counsel for Plaintiff,  
Marc J. Randazza, P.C.

# EXHIBIT 101

EXHIBIT 101

9/18/12

<https://secure.bill4time.com/B4T2/Invoicing/printInvoices2.aspx>

<b>Total Hours</b>	12.90 hrs
<b>Total Attorney Time</b>	\$913.00
<b>Total Amount</b>	<b>\$913.00</b>

<b>Total Hours</b>	13.70 hrs
<b>Total Attorney Time</b>	\$953.00
<b>Total Expenses</b>	\$5,468.85
<b>Total Invoice Amount</b>	<b>\$6,421.85</b>
<b>Previous Balance</b>	<b>\$0.00</b>
<b>Balance (Amount Due)</b>	<b>\$6,421.85</b>

**Notes:**

Jason,

This is for the RLG lawyers we have used as local counsel. I have only billed you what I pay them, to the closest approximation I can come up with. Normally, Jason Fischer bills at \$325 per hour, and Jay DeVoy bills a \$275 per hour. You're getting billed at \$90 and \$50 per hour respectively on this bill. In the future, that may go up or down as the expenses I pay for those guys change. However, the intent is to ensure that they don't cost me anything out-of-pocket, but also that I do not earn any profit from their labor if they do work for you.

That's the \$913.

The remainder is just the expenses that I put on my RLG credit card. I have submitted, through Eric, a separate expense report for that.

I also have a personal expense report. But, that is submitted separately.



EXHIBIT 102

EXHIBIT 102



1. Oron pays Liberty Media \$550,000.

8. Once payment is received by both parties, both proceedings in NV and HK will be dismissed with prejudice, and in the event that Oron breaks any part of the deal, the claims may be reinstated via arbitration after a 30 day “notice and cure” period.

12. Liberty agree to announce publically that after a careful review of the facts they believe Oron is protected by the DMCA safe harbor and that a review of the actual files shows that there never was any child porn on Oron’s site.

14. Liberty will immediately, once the terms of the agreement are agreed to issue a letter asking that the HK bank accounts be unfrozen allowing the payment to the Randazza Trust and then to Leaseweb as well as send a letter to Leaseweb asking them to allow Oron ten (10) days to pay as the settlement of the matter is imminent.

15. All parties mutually release

19. If you agree to these terms for your client please sign on the line below and return.

(*See id.*)

On July 2, 2012, Plaintiff sent a letter to Bob Rietjens, Senior Legal Counsel at LeaseWeb, disclosing that the parties were near a settlement and requested that LeaseWeb not terminate the account for www.oron.com due to nonpayment. (Letter to LeaseWeb, Ex. B attached to Mtn to Enforce Settlement, ECF No. 33-2.) On July 3, 2012, the parties filed a Joint Stipulation to Extend Hearing Date and Submission Deadlines so that the parties could “facilitate attempts to narrow the issues in this matter or to come to a mutually beneficial resolution to the dispute.” (Stipulation, ECF No. 28.) On July 3, 2012, S.T. Poon & Wong, Defendant FF Magnat Limited’s counsel in the Hong Kong matter, delivered a letter to Plaintiff’s Hong Kong counsel that states “[w]e are instructed that our client had reached an amicable settlement.” (HK Letter, Ex. C attached to Mtn to Enforce Settlement, ECF No. 33-3.)

A dispute arose after the Settlement Letter was signed and after Plaintiff sent the letter to LeaseWeb. E-mails sent between Stevan Lieberman, counsel for Defendant, and Marc Randazza, counsel for Plaintiff, on July 3, 2012, indicate that the parties disputed who was/would

1 be bound by the terms of the Settlement Letter. (*See* Lieberman Decl. ¶¶6-9, ECF No.44-1; E-  
2 mails, Exs. B-E attached to Response, ECF Nos. 44-3-44-6.) Defendant believed that all  
3 defendants, including Mr. Bochenko, would be included in the terms; Plaintiff apparently did not.  
4 (*See id.*) On July 3, 2012, Marc Randazza sent an e-mail to his paralegal, on which Stevan  
5 Lieberman was copied. In this e-mail Randazza instructs his paralegal that they “need to put the  
6 brakes on this. While I am not certain, it appears that settlement is not going to happen...we may  
7 get back on track, but it seems that right now, the settlement we brokered is going off the rails.”  
8 (Email re: Consent Summons, Ex. 1 attached to Reply, ECF No. 66-1.)

9 However, Plaintiff eventually conceded to Defendant’s interpretation of the Settlement  
10 Letter and agreed that the settlement would also apply to Mr. Bochenko. (*See* Text Messages,  
11 Ex. B attached to Reply to Mtn to Seal, ECF No. 41-2; Randazza Decl. ¶¶ 2-7, ECF No. 66-3.)  
12 After discussing the issue with Defendant’s local counsel, Mr. David Kahn, Plaintiff’s counsel  
13 agreed to Defense Counsel’s interpretation and said he would back down from his interpretation  
14 that the settlement was only with Defendant. (*See id.*)

## 15 DISCUSSION

### 16 A. Legal Standard

17 “It is well settled that a district court has the equitable power to enforce summarily an  
18 agreement to settle a case pending before it. However, the district court may enforce only  
19 *complete* settlement agreements.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987) (citations  
20 omitted). “Whether the parties *intended* only to be bound upon the execution of a written,  
21 signed agreement is a factual issue.” *Id.* at 890-91. “In addition to the intent of the parties to  
22 bind themselves, the formation of a settlement contract requires agreement on its *material*  
23 *terms.*” *Id.* at 891. “Because a settlement agreement is a contract, its construction and  
24 enforcement are governed by principles of contract law.” *May v. Anderson*, 119 P.3d 1254, 1257  
25 (Nev. 2005) (footnote omitted).

1 Under Nevada law, “[b]asic contract principles require, for an enforceable contract, an  
2 offer and acceptance, meeting of the minds, and consideration.” *Id.* (footnote omitted). “A valid  
3 contract cannot exist when material terms are lacking or are insufficiently certain and definite.”  
4 *Id.* (footnote omitted). “A contract can be formed, however, when the parties have agreed to the  
5 material terms, even though the contract’s exact language is not finalized until later.” *Id.*  
6 (footnote omitted). Ordinarily, “[w]here a complete contract was made orally, the fact that it  
7 was expected that a written contract would afterwards be signed, embodying the terms of the  
8 oral contract, does not prevent the oral contract from taking effect.” *Micheletti v. Fugitt*, 134  
9 P.2d 99, 104 (Nev. 1943).

10 “In the case of a settlement agreement, a court cannot compel compliance when material  
11 terms remain uncertain.” *May v. Anderson*, 119 P.3d at 1257 (footnote omitted). “The court  
12 must be able to ascertain what is required of the respective parties.” *Id.* (footnote omitted).  
13 “[T]he question of whether a contract exists is one of fact.” *Id.*

14 “[T]he evidence that the parties intended to be presently bound must be convincing and  
15 subject to no other reasonable interpretation.” *Tropicana Hotel Corporation v. Speer*, 692 P.2d  
16 499, 502 (Nev. 1985) (examining manifestations of the parties’ intent regarding the finality of an  
17 oral contract); *see also Mack v. Estate of Mack*, 206 P.3d 98, 108 (Nev. 2009) (concluding that  
18 “substantial evidence exists that shows a meeting of the minds between the parties” “based on  
19 [opposing party]’s clear assent to the terms of the settlement agreement at the hearings held by  
20 [the judge]”).

## 21 B. Analysis

22 The Court first looks at the Settlement Letter to determine if the parties intended to be  
23 presently bound by the terms within. Defendant describes the letter as a “draft term sheet for  
24 review by Plaintiff’s counsel, setting out certain terms of a proposed settlement.” (Response,  
25 4:18-19, ECF No. 44, citing Lieberman Decl. ¶¶ 3-4.) At the top of this letter the subject line

1 reads "Potential Settlement." (Settlement Letter, pg. 1.) The first line of the letter states "[t]his  
2 letter is to memorialize what I believe is the settlement terms we are currently at for Liberty  
3 Media Holdings (LMH)." (*Id.*) The last page of the letter includes the following language: "[i]f  
4 you agree to these terms for your client please sign on the line below and return." (*Id.* at pg. 3.)

5 There is nothing in the Settlement Letter that indicates that Defendant did not intend to be  
6 presently bound by the proposed terms or that a future writing was required. The requirement  
7 for the Plaintiff's attorney to sign and return indicates that the parties do agree that all these  
8 terms are acceptable and binding. If this was only a proposal of terms there probably would not  
9 be a requirement for Plaintiff's counsel to sign and return.

10 Moreover, Defendant does not argue that it did not intend to be bound by the terms once  
11 the letter was signed. Instead Defendant only points to statements made by Plaintiff after  
12 signing the letter that it argues indicates the negotiations were ongoing. Defendant argues that  
13 the settlement was not final because the letter sent by Plaintiff to LeaseWeb states that  
14 "Oron.com is on the eve of making a deal with us." Likewise Defendant argues that the  
15 stipulation submitted to the court to delay the hearing on the permanent injunction motion does  
16 not state that a settlement was reached and that Plaintiff's counsel's comments indicating that  
17 "the settlement we brokered is going off the rails," is further proof of no settlement.

18 However, the Court is not persuaded that any of these statements are sufficient evidence  
19 to indicate that the parties did not intend to be bound by the terms in the signed Settlement  
20 Letter. The comment that "Oron.com is on the eve of making a deal" only indicates that  
21 documents have not been finalized. A contract can be formed so long as the parties agree to the  
22 material terms, even though the contract's exact language is not finalized until later. *See May*,  
23 119 P.3d 1254 at 1257. The stipulation submitted to the Court likewise makes no concession  
24 regarding the state of the settlement negotiations. Finally, the comments that the "settlement we  
25 brokered is going off the rails" including the context of the e-mail actually indicates the

1 contrary, that Defendant was not holding up its end of the bargain.

2       Thus the Court needs to determine if all the material terms of the contract were agreed to  
3 in the Settlement Letter. Defendant claims that it understood the Settlement Letter would  
4 release all defendants from the claims by Plaintiff. The e-mail correspondence that took place  
5 on July 3, 2012, however, demonstrates that Plaintiff believed the Settlement Letter only applied  
6 to Defendant and not Mr. Bochenko. The parties' correspondence on July 3, 2012, makes clear  
7 that the avoidance of future litigation was a goal of Defendant in seeking the settlement. (*See E-*  
8 *mails.*) Defendant argues that it always believed that it could not ensure future litigation arising  
9 from the facts of this case if Mr. Bochenko was not also dismissed with prejudice. "If the  
10 prevention of future litigation is one of the primary goals of a settlement, the essential terms of  
11 the release needed to achieve that goal are material to the settlement agreement." *May*, 119 P.3d  
12 at 1258. Thus it does appear there was no meeting of the minds regarding a material term of the  
13 settlement at the time of the Settlement Letter. However, the issue then becomes whether or not  
14 Plaintiff's latter acceptance of Defendant's proposed interpretation of the settlement term – a  
15 latter "meeting of the minds" – constitutes an enforceable settlement agreement.

16       Plaintiff's counsel orally accepted Defendant's interpretation of the released parties in his  
17 conversation with local counsel David Kahn on July 5, 2012, and also sent the same in a text  
18 message to Mr. Lieberman. (Randazza Decl. attached to Reply, ECF No. 66-3.) There can be no  
19 dispute that there was a meeting of the minds regarding the material term at that point.  
20 Defendant cannot simply disregard Plaintiff's acceptance of its settlement term and argue that  
21 there was never a "meeting of the minds" because there obviously was at some point. It does  
22 not matter that some of the material terms are agreed to orally so long as there was intent to be  
23 bound by the agreement. *See May*, 119 P.3d 1254 at 1257. Defendant cannot plausibly claim  
24 that it no longer intended to be bound by all the other terms of the Settlement Letter when it "got  
25 its way" on the one material term in dispute.



1 The Court finds that there is an enforceable contract. The Settlement Letter written by  
2 Defendant was an offer, accepted by Plaintiff when its counsel signed the letter. There was a  
3 meeting of the minds as to all material terms on July 5, 2012, when Plaintiff agreed that the  
4 settlement would include dismissal with prejudice of Mr. Bochenko. There settlement includes  
5 valuable consideration on the part of both Plaintiff and Defendant. In this case, the Court can  
6 compel compliance because there are no uncertain material terms that remain. Accordingly, the  
7 Court grants Plaintiff's Motion to Enforce Settlement.<sup>2</sup>

8 C. Motion to Seal

9 Plaintiff filed a Motion to Seal (ECF No. 32) its Motion to Enforce Settlement (ECF No.  
10 33) and Motion for Attorney's Fees (ECF No. 34). Plaintiff explains that it wishes to file these  
11 two motions with accompanied exhibits under seal because they include discussions of the  
12 settlement agreement which was supposed to be confidential. Defendant filed a fiery opposition  
13 explaining that the motions should not be filed under seal because the terms had already been  
14 leaked to the media and that Plaintiff has not proffered any other reason to file the documents  
15 under seal. (*See* Opposition, ECF No. 39.) Plaintiff basically withdraws its motion in its Reply.  
16 Plaintiff acknowledges that if Defendant does not want the documents filed under seal then it  
17 will not continue to move for such protection. (*See* Reply, ECF No. 41.) Accordingly, the Court  
18 does not see any reason to grant the Motion to Seal.

19 CONCLUSION

20 IT IS HEREBY ORDERED that Plaintiff Liberty Media Holdings, LLC's Motion to  
21 Enforce Settlement (ECF No. 33) is GRANTED.

22 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment against  
23

---

24 <sup>2</sup> The Court recognizes that Defendant has always challenged personal jurisdiction in this case. (*See* Response to PI, ECF No.  
25 71; Mtn to Dismiss, ECF No. 73.) However, Defendant waived personal jurisdiction as to the enforcement of the settlement  
agreement when it agreed to settle this case with Plaintiff. Accordingly, this Court finds that it has personal jurisdiction over  
Defendant for the sole purpose of enforcing the settlement agreement.

1 “FF Magnat Limited, *d/b/a/ Oron.com*” and in favor of Plaintiff in the amount of \$550,000.00,  
2 and execution of that amount shall be issued forthwith.

3 IT IS FURTHER ORDERED that FF Magnat’s account shall remain frozen, in order to  
4 satisfy any fee award, which may be sought by Plaintiff, but which must be brought within thirty  
5 (30) days of this Order.

6 IT IS FURTHER ORDERED that this case is DISMISSED with prejudice against  
7 Defendant FF Magnat and Defendant Maxim Bochenko.


8 IT IS FURTHER ORDERED that Plaintiff’s Motion to Seal (ECF No. 32) is DENIED.  
9 All documents filed under seal shall be immediately unsealed by the Clerk.

10 IT IS FURTHER ORDERED that the Motions at ECF Nos. 4, 5, 6, 21, 68, 70 and 73  
11 are DENIED as moot.

12 IT IS FURTHER ORDERED that Plaintiff’s Motion for Attorney’s Fees (ECF No. 34)  
13 remains under submission with the Court.

14 IT IS FURTHER ORDERED that the motion hearing scheduled for Thursday, August  
15 9, 2012 at 1:30 p.m. in Courtroom 7D, is hereby VACATED.

16 DATED this 7th day of August, 2012.

17  
18  
19   
20 Gloria M. Navarro  
United States District Judge  
21  
22  
23  
24  
25

**IAFD**

Clyde DeWitt  
Nevada State Bar No. 9791  
Law Offices of Clyde DeWitt,  
A Nevada Professional Corporation  
6525 West Warm Springs Road, Suite 100  
Las Vegas, NV 89118-4679  
(702) 386-1756; Fax (310) 362-8667  
[clydedewitt@earthlink.net](mailto:clydedewitt@earthlink.net)

Counsel for Plaintiff

**IN THE DISTRICT COURT**

**FOR THE STATE OF NEVADA, COUNTY OF CLARK**

**EIGHTH JUDICIAL DISTRICT**

MARC J. RANDAZZA P.A., a Florida  
professional association doing business  
as RANDAZZA LEGAL GROUP,

Plaintiff,

vs.

LIBERTY MEDIA HOLDINGS, LLC,  
a California limited-liability company  
doing business as Corbin Fisher,

Defendant.

Case No: \_\_\_\_\_

**INITIAL APPEARANCE FEE  
DISCLOSURE**

**[NEV. REV. STAT. Ch. 19]**

**INITIAL APPEARANCE FEE DISCLOSURE (N.R.S. CHAPTER 19)**

Pursuant to Nevada Revised Statutes Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	1 <sup>st</sup> Appearance Fee
<input type="checkbox"/> \$1530 <input type="checkbox"/> \$520 <input type="checkbox"/> \$299 <input checked="" type="checkbox"/> <b>\$270.00</b>	<input type="checkbox"/> \$1483.00 <input type="checkbox"/> \$473.00 <input type="checkbox"/> \$223.00

Name: LIBERTY MEDIA HOLDINGS,  
LLC

Jason Gibson X \$30

☐ \$30

☐ Total of Continuation Sheet Attached ☐ \$

**TOTAL REMITTED: \$270.00**

**Total Paid**

**\$300.00**

Dated: December 5, 2012

Respectfully Submitted,

CLYDE DeWITT  
LAW OFFICES OF CLYDE DeWITT, APC

By: /s/ Clyde DeWitt  
Clyde DeWitt

Counsel for Plaintiff

1 Clyde DeWitt (Nevada Bar No. 9791)  
2 LAW OFFICES OF CLYDE DeWITT, APC  
3 6525 W. Warm Springs Road, Suite 100  
4 Las Vegas, NV 89118  
5 Telephone: (702) 386-1756  
6 Facsimile: (702) 441-0308  
7 ClydeDeWitt@EarthLink.net

8 Counsel for Plaintiff,  
9 Marc J. Randazza, P.A.

10  
11 **IN THE DISTRICT COURT**  
12 **FOR THE EIGHTH JUDICIAL DISTRICT**  
13 **CLARK COUNTY, STATE OF NEVADA**

14 MARC J. RANDAZZA P.A., a Florida  
15 professional association doing business as  
16 RANDAZZA LEGAL GROUP,

17 Plaintiff,

18 vs.

19 LIBERTY MEDIA HOLDINGS, LLC, a  
20 California limited-liability company  
21 doing business as Corbin Fisher and  
22 JASSON GIBSON, an individual,

23 Defendants.

Case No. \_\_\_\_\_

Dept. No. \_\_\_\_\_

24 **DISCLOSURE STATEMENT**  
25 **[NEV. R. CIV. PROC.7.1]**  
26  
27  
28

**DISCLOSURE STATEMENT**

Pursuant to Rule 7.1 of the Nevada Rules of Civil Procedure, Plaintiff Marc J. Randazza P.A. d/b/a Randazza Law Group here discloses that it has no parent corporation or any publicly held corporation owning 10% or more of its stock.

Dated: December 9, 2012.

Respectfully Submitted,

LAW OFFICES OF CLYDE DeWITT, APC

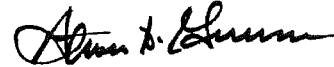
By: /s/ clydedewitt .  
Clyde DeWitt

Counsel for Plaintiff,  
Marc J. Randazza, P.C.

## **EXHIBIT 2**



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CLERK OF THE COURT

**FAC**

Ronald D. Green (Nevada Bar No. 7360)  
J. Malcolm DeVoy (Nevada Bar No. 11950)  
RANDAZZA LEGAL GROUP  
6525 W. Warm Springs Road, Suite 100  
Las Vegas, NV 89118  
Telephone: 888-667-1113  
Fax: 305-437-7662  
ecf@randazza.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARC J. RANDAZZA P.A., a Florida  
professional association doing business as  
RANDAZZA LEGAL GROUP,

Plaintiff,

vs.

Liberty Media Holdings, LLC, a California  
limited-liability company doing business as  
CORBIN FISHER,

Defendant.

Case No. A-12-673275-C  
Dept. No. VIII

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

**-BREACH OF CONTRACT  
-UNJUST ENRICHMENT  
-ACCOUNT STATED**

**• JURY TRIAL DEMANDED**

**NRCP 38**

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff Marc J. Randazza P.A., d/b/a RANDAZZA LEGAL GROUP, hereby brings this  
Complaint against Defendant Liberty Media Holdings LLC ("LMH"), and alleges as follows:

**I. Introduction**

This is an action by a law firm to collect fees due from its former client. The law firm accomplished all that was requested by the client, but the former client refuses to pay and has no intention of doing so. LMH has admitted that RLG performed extensive work for it, as is obvious from the underlying case's docket, and was charged for this work. (Exhibit 101 ¶¶ 1, 3, 6) Despite these admissions, LMH has forced RLG to seek judicial assistance to resolve this issue.

1           1.       Randazza Legal Group (“RLG”) is a nationally recognized law firm, best known  
2 for handling high-profile First Amendment, entertainment and intellectual property matters.  
3 Liberty Media Holdings LLC (“LMH”), an adult entertainment company, hired RLG to represent  
4 it in a copyright infringement matter before the United States District Court for the District of  
5 Nevada<sup>1</sup> (the “Oron Litigation”). RLG performed excellently in the litigation, obtaining, *inter*  
6 *alia*, a temporary restraining order of the defendant’s funds without a hearing, a settlement of  
7 \$550,000, judicial enforcement of that settlement, collection of that amount, and an attorney’s  
8 fees award of more than \$131,797.00. In return, LMH refused to pay RLG anything for its  
9 services.

10           2.       RLG had long represented LMH in copyright infringement litigation in Nevada,  
11 Florida, Arizona, California, Texas, and Wisconsin. In the past, LMH regularly paid RLG for its  
12 services.

13           3.       Because of the close, ongoing relationship between LMH and RLG, and the  
14 hourly nature of the firm’s fee structure in such matters, the parties saw no need for a written  
15 agreement, nor was one required by any provision of the law or Nevada Rules of Professional  
16 Conduct. Nevertheless, Randazza made the terms of representation clear to LMH’s CEO, Jason  
17 Gibson, and he ratified them.

18           4.       To date, Liberty Media Holdings LLC has refused to pay RLG any amount for its  
19 services in the Oron Litigation. With negotiations having failed, RLG has no choice but to sue  
20 LMH to recover the \$81,433.98 in reasonable attorneys’ fees it provided to LMH without  
21 payment.<sup>2</sup>

22 //

23 //

24 \_\_\_\_\_  
25 <sup>1</sup> *Liberty Media Holdings LLC v. FF Magnat Limited, d/b/a Oron.com, et al.*, Case No. 2:12-cv-  
01057 (D. Nev. 2012).

26 <sup>2</sup> The actual value of RLG’s services exceeds \$131,797, but a portion of this value is resolved  
27 with Marc Randazza’s personal salary from Liberty Media Holdings and its sister company,  
28 Excelsior Media Corporation. Thus, Plaintiff seeks only the outstanding \$81,433.98 in  
reasonable attorneys’ fees that it is owed.

**II. Jurisdiction and Venue**

5. Plaintiff seeks damages in excess of \$10,000 against LMH. Accordingly, this court has jurisdiction pursuant to Nev. Const. Art. 6 § 6; NRS 4.370(1)(A).

6. Venue is proper in this court because Liberty Media Holdings LLC is a California limited liability company with its principal place of business in Clark County, Nevada.

7. Furthermore, the contract and transaction that are the subject of this action were formed, to be performed, and in fact performed in Clark County, Nevada. Therefore, venue is proper pursuant to NRS 13.010.

8. Accordingly, jurisdiction and venue before this court are proper.

**III. Parties**

**A. The Plaintiff**

9. Plaintiff, Marc J. Randazza P.A., is a professional association organized and existing under the laws of the State of Florida that does business as Randazza Legal Group.

10. Known nation-wide for its participation and success in intellectual property and First Amendment matters, as well as other high-profile disputes widely covered by the media, RLG represents a number of adult entertainment companies, previously including LMH.

11. Particular to this action, RLG represented LMH in the Oron Litigation before the United States District Court for the District of Nevada.

**B. The Defendant**

12. LMH is a California limited-liability company with its primary place of business in Clark County, Nevada, and the plaintiff in the Oron Litigation.

13. LMH is a producer of adult entertainment and has been a leading force in the adult industry's ongoing efforts to combat digital piracy.

14. Since 2009, LMH had retained RLG to further these goals, and frequently used RLG's services to engage in litigation against users of BitTorrent who unlawfully distributed LMH's copyrighted content, video-playing "tube" sites that unlawfully displayed LMH's copyrighted content, and one-click-hosting sites known as "cyber lockers" that also unlawfully distributed LMH's copyrighted content.

1           15.     LMH's CEO, Jason Gibson, was RLG's point of contact within LMH, and had a  
2 close, working relationship with RLG's managing partner, Marc Randazza, for many years.

3                   **IV.     Facts Common to All Claims for Relief**

4                   **A.   The Relationship between RLG and LMH.**

5           16.     RLG and its managing partner, Marc Randazza, are widely-known and nationally  
6 recognized attorneys for the adult entertainment industry, particularly in the area of copyright.

7           17.     As one of RLG's longest-standing clients, LMH routinely used RLG's services to  
8 engage in a variety of intellectual property litigation nationwide.

9           18.     Through RLG, LMH had engaged in litigation coast-to-coast, from  
10 Massachusetts, Pennsylvania, Florida, Texas and Wisconsin, to Nevada, Arizona, and California.  
11 This strategy was made possible because of the number of law licenses national connections, and  
12 affiliates held and maintained by RLG's attorneys.

13           19.     RLG's relationship with LMH was facilitated by Marc Randazza's role as general  
14 counsel to LMH and its sister companies, including Excelsior Media Corporation, Becar  
15 Management LLC, and HMF Workforce, LLC.

16           20.     Because of Marc Randazza's close relationship with LMH, he was able to  
17 leverage his law firm, RLG, to LMH's benefit – offering significant discounts to LMH on RLG's  
18 services in consideration of his ongoing relationship with the company. LMH was not only fully  
19 aware of this arrangement, but encouraged it and contemplated it within its employment  
20 agreement with Marc Randazza.

21           21.     In return, Marc Randazza was able to provide certain volume discounts on RLG's  
22 rates to LMH on the condition that LMH timely paid for RLG's services, and that LMH and its  
23 sister companies continued to employ Randazza as their general counsel.

24           22.     Since July 2009, Marc Randazza, LMH and RLG enjoyed this understanding, and  
25 it operated as an operating contract among the parties.

26           23.     Although this agreement was never reduced to writing, Marc Randazza, RLG and  
27 LMH saw no reason for it to be, as LMH paid RLG's bills and continued to employ Marc  
28 Randazza as its general counsel. (Exhibit 102)

**B. The Oron Litigation**

24. In June 2012, LMH used RLG to commence the Oron Litigation.

25. Marc Randazza had been researching the defendant in that action, FF Magnat Limited, for more than a year, and had carefully planned LMH's attack on the company – including the seizure of its domestic and foreign financial assets.

26. On or about June 20, 2012, RLG commenced the Oron Litigation, filing a Complaint and ex parte motion for temporary restraining order against FF Magnat Limited. Concurrently, Marc Randazza had coordinated a similar action seeking a Mareva injunction<sup>3</sup> in Hong Kong to freeze FF Magnat Limited's assets within the Hong Kong Special Administrative Region and globally.

27. Concurrent with LMH's United States litigation, it also desired to freeze Oron.com's international assets through the use of a Mareva injunction obtained in Hong Kong, where FF Magnat Limited was organized.

28. On June 22, 2012, The United States District Court for the District of Nevada granted LMH's ex parte motion for a temporary restraining order against FF Magnat Limited's assets. The Court granted this motion without hearing, and set a further briefing schedule for LMH's desired preliminary injunction against FF Magnat Limited.

29. FF Magnat then moved to withdraw nearly \$400,000 in funds from its frozen accounts to fund its litigation defense. RLG swiftly opposed this motion, and the Court allowed FF Magnat Limited to withdraw only \$100,000 for its litigation defense. RLG successfully opposed all future requests for disbursement of funds and other monetary relief before both the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit.

30. On July 1, RLG negotiated a settlement of the Oron Litigation between LMH and FF Magnat Limited for \$550,000.

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<sup>3</sup> A Mareva Injunction freezes a defendant's assets in numerous foreign jurisdictions.

1           31. Shortly thereafter, however, FF Magnat began acting contrary to its settlement  
2 agreement with LMH, and claiming that no such agreement had been reached.

3           32. RLG moved the United States District Court for the District of Nevada to enforce  
4 LMH's settlement agreement with FF Magnat Limited.

5           33. While briefing on RLG's motion to enforce LMH's settlement agreement  
6 progressed, RLG prepared and filed LMH's briefing opposing Defendant Maxim Bochenko's  
7 motion to dismiss for lack of personal jurisdiction, and an extensive reply brief in support of  
8 LMH's motion for preliminary injunction.

9           34. Almost immediately after those documents were filed, the Court entered an order  
10 on August 7, 2012 granting LMH's motion to enforce its settlement agreement with FF Magnat  
11 Limited, and entering judgment of \$550,000 in LMH's favor against FF Magnat Limited.

12           35. RLG went about seeking to enforce LMH's \$550,000 judgment immediately. On  
13 August 21, 2012, RLG filed a motion seeking an order requiring PayPal, Incorporated – a third  
14 party payment processor holding hundreds of thousands of dollars of FF Magnat Limited's  
15 money which had been frozen under the Court's order – to pay \$550,000 from FF Magnat  
16 Limited's frozen accounts to LMH, via RLG's trust account.

17           36. That same day, the United States District Court for the District of Nevada granted  
18 RLG's motion and entered an order requiring PayPal to transfer \$550,000 from FF Magnat  
19 Limited's account to LMH.

20           37. RLG then collected those funds for LMH's benefit.

21           38. In addition to the \$550,000 settlement amount, RLG wished for Liberty to recover  
22 the reasonable value of its attorneys' fees and costs.

23           39. On August 10, 2012, RLG moved for more than \$132,000 in attorneys' fees and  
24 costs.

25           40. On September 4, 2012, the United States District Court for the District of Nevada  
26 entered an order granting RLG's motion, and awarding LMH \$131,797.50 in attorneys' fees. A  
27 true and correct copy of this order is attached as Exhibit 103.

1           41. In recent filings before the United States Court of Appeals for the Ninth Circuit,  
2 LMH affirmed the reasonableness of RLG's attorneys' fees and confirmed that RLG provided  
3 extensive legal services in the Oron Litigation at its direction. (Exhibits 101, 104)

4           42. Regarding RLG's \$81,433.98 in reasonable attorneys' fees expended in the Oron  
5 Litigation, LMH represented that:

- 6           a. "the District Court ultimately based its attorney fees award [Exhibit 103] on a  
7 lodestar analysis that **did not depend on the amount of attorney fees incurred**";
- 8           b. "the amount of **fees awarded by the District Court [should] stand**";
- 9           c. "Because the outcome of **the lodestar method employed by the District Court**  
10 **required an examination of the reasonableness of the attorney fees expended**  
11 **on Liberty's behalf rather than the reasonableness of the attorney fees**  
12 **actually [paid] by Liberty, no further analysis by the District Court [as to the**  
13 **reasonableness of RLG's fees] is necessary**"; and
- 14           d. "Liberty respectfully submits that **the Court should exercise this authority and**  
15 **summarily affirm the amount of attorney fees awarded by the District**  
16 **Court**" (Exhibit 104) (emphasis added).

17           43. LMH's Chief Financial Officer, Henry Leonard – a Certified Public Accountant,  
18 Certified Management Accountant, and holder of a Ph.D. – affirmed under penalty of perjury  
19 that RLG provided legal services to LMH in the Oron Litigation (Exhibit 101 ¶ 4).

20           44. Mr. Leonard further stated, under penalty of perjury, that RLG charged LMH in  
21 the Oron Litigation (Exhibit 101 ¶ 6).<sup>4</sup>

22           45. However, Liberty has not paid any of RLG's fees.

23           46. Thus, while LMH refuses to pay RLG anything for its legal services – and wishes  
24 to impugn RLG before the Court of Appeals for conduct it simultaneously admits was proper –  
25 LMH seeks to retain the benefit of RLG's market value rates within its fee award. (Exhibit 104)

26 <sup>4</sup> Mr. Leonard's discussion of a discount for LMH is consistent with the discount Mr. Randazza  
27 provided to LMH for his firm's rates as a condition of his continued employment and the timely  
28 payment of RLG's fees.



**C. LMH Breaches Its Contract With RLG**

47. On August 30, 2012, LMH unilaterally terminated Randazza from his employment as the company's general counsel.

48. On or about August 31, 2012, LMH retained the Greenberg Traurig law firm to represent it in the Oron Litigation; and RLG signed a substitution of counsel form Greenberg Traurig supplied to RLG.

49. Thereafter, the United States District Court for the District of Nevada approved LMH's request for substitution of counsel, and Greenberg Traurig replaced RLG in the Oron Litigation.

50. Since August 30, RLG's efforts to have LMH pay the past-due balance of \$81,433.98 have been unsuccessful.

51. By terminating Randazza, terminating its relationship with RLG, and failing to make any payments toward RLG's bills for its legal services in the Oron Litigation, LMH has materially breached its agreement with RLG.

**First Claim for Relief: Breach of Contract**

**Against Defendant LMH**

52. Plaintiff incorporates and realleges each preceding paragraph by reference as if set forth herein.

53. RLG and LMH had an oral agreement for RLG to provide LMH with legal representation in the Oron Litigation, as well as in other matters.

54. Over many years' course of dealing, LMH solidified this contractual relationship with RLG, with regular payments for its legal services in a wide range of legal matters, including copyright infringement litigation.

55. LMH materially breached this contract by failing to pay RLG for any of the legal services it rendered in the Oron Litigation.

56. RLG has been damaged by LMH's breach, and suffered \$81,433.98 in damages due to LMH's breach and non-payment for RLG's legal services.

//



**Second Claim for Relief: Unjust Enrichment / Quantum Meruit**

**Against LMH**

57. Plaintiff incorporates and realleges each preceding paragraph by reference as if set forth herein.

58. In the alternative to RLG's breach of contract claim, Plaintiff brings an unjust enrichment claim in an effort to streamline this litigation. During negotiation, LMH and its sibling companies have adopted unreasonable, inconsistent, and even contradictory positions regarding its liability to RLG for its attorneys' fees.

59. RLG thus expects LMH to disavow any form of contract with the firm, and as a result the firm is entitled to the reasonable value of its attorneys fees. As established by Exhibit 103, the reasonableness of these fees at \$81,433.98 has been adjudicated by the United States District Court for the District of Nevada.

60. By providing extensive legal services to LMH in the Oron Litigation, RLG conferred the benefits of its labor and legal representation onto LMH.

61. LMH benefitted from this representation by achieving a settlement of \$550,000 from FF Magnat Limited, obtaining judicial enforcement of that settlement agreement (including a third party's transfer of FF Magnat Limited's funds into RLG's trust account), and an attorney's fee award of more than \$131,797.00.

62. LMH consumed these services as they were rendered, and retained their benefits – including the favorable orders and decisions RLG obtained for it – without payment, or beseeching the Court to reverse the benefits of RLG's representation.

63. LMH refused to pay RLG for these services, yet has retained the benefits and legal entitlements RLG obtained for LMH.

64. LMH further seeks to enjoy the benefit of RLG's market rates through its award of attorneys' fees, but now refuses to pay those market rates (or anything) to RLG.

65. As a consequence of LMH's refusal to render any payment for RLG's services in the Oron Litigation, RLG has been damaged in the amount of its services reasonable value: \$81,433.98.

1           66. In light of the services RLG provided to LMH and results the firm obtained for  
2 LMH, it would be inequitable for LMH to retain the benefits of RLG's services without  
3 payment.

4                           **Third Claim for Relief: Account Stated**

5                                   **Against LMH**

6           67. Plaintiff incorporates and re-alleges each preceding paragraph by reference as if  
7 set forth herein.

8           68. LMH's use of RLG in the Oron Litigation represented an account with RLG, as it  
9 periodically charged LMH for its services. (Exhibit 101 ¶¶ 3, 6)

10          69. In the past, LMH paid RLG's invoices and charges passed on to it by Mr.  
11 Randazza, and had agreed to pay RLG's invoices and charges going forward – including in the  
12 Oron Litigation.

13          70. Mr. Randazza kept LMH's executives apprised of RLG's fees and charges during  
14 the Oron Litigation's pendency.

15          71. Despite providing a statement confirming an outstanding balance, and repeated  
16 demands to repay this obligation, LMH refused and continues to refuse pay any part of this  
17 obligation.

18          72. RLG has suffered damages from LMH refusing to pay any portion of its still-  
19 outstanding account with RLG.

20                           **Request for Relief**

21 Plaintiff seeks judgment including the following:

22          1. On the First Claim for Relief, Actual damages of more than \$10,000 arising from  
23 LMH's breach of contract.

24          2. On the Second Claim for Relief, actual damages of more than \$10,000 arising  
25 from LMH's unjust enrichment at RLG's expense.

26          3. On the Third Claim for Relief, actual damages of more than \$10,000 arising from  
27 RLG's account stated against LMH.

28          4. Any and all additional relief as ordered by the Court.

**Jury Trial Demanded**

Plaintiff demands a jury trial on all issues to which the right to jury attaches.

Dated March 11, 2013

RANDAZZA LEGAL GROUP

/s/ Ronald D. Green

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Ronald D. Green  
J. Malcolm DeVoy

Attorney for Plaintiff,  
*Marc J. Randazza P.A.*

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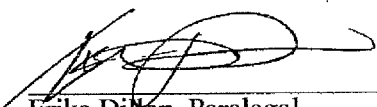
**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was deposited in the U.S. Mail via First Class mail addressed to the recipients below and served upon them pursuant to Nev. R. Civ. P. 5 on March 11, 2013.

Mitchell J. Langberg  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

Laura E. Bielinski  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

Dated: March 11, 2013



Erika Dillon, Paralegal  
Randazza Legal Group  
6525 W. Warm Springs Road, Suite 100  
Las Vegas, NV 89118  
ecf@randazza.com

# **EXHIBIT 101**

**DECLARATION OF HENRY LEONARD**

I, Henry Leonard, PhD, CPA, CMA, hereby declare under penalty of perjury as follows:

1. I am the Chief Financial Officer of Appellee Liberty Media Holdings, LLC ("Liberty"). I have served in this capacity since November 2011 and have been employed by Liberty since 2009. I make this Declaration in support of "Appellee's Motion For An Order Reassessing And Summarily Affirming The Amount Of The District Court's Attorney Fees Award Or, In The Alternative, Remanding This Case To The District Court, Following The Disposition Of This Appeal, For The Limited Purpose Of Obtaining A Reassessment Of The Amount Of Its Attorney Fees Award."

2. I have personal knowledge of the matters set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

3. As Chief Financial Officer, I am involved in Liberty's day-to-day financial decisions and am familiar with the billing and payment processes for Liberty's vendors and service providers, including Liberty's former counsel, the Randazza Legal Group.

4. The Randazza Legal Group represented Liberty in the matter of *Liberty Media Holdings, LLC v. FF Magnat Limited d/b/a Oron.com*, United States

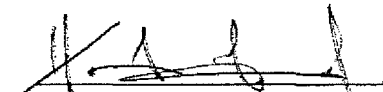
District Court, District of Nevada, Case No. 2:12-cv-01057-GMN-RJJ (the "Oron Litigation").

5. Marc Randazza, Esq. of the Randazza Legal Group served as Liberty's general counsel during the course of the Oron Litigation, and in that capacity was a salaried employee of Liberty. Mr. Randazza did not charge Liberty an hourly rate for his own services in the Oron Litigation.

6. Mr. Randazza also charged Liberty reduced hourly rates in the Oron Litigation for the legal services provided by other attorneys and legal assistants employed by his firm.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 12th day of February, 2013 at Las Vegas, Nevada.

  
Henry Leonard

# **EXHIBIT 102**



9/18/12

<https://secure.bill4time.com/B4T2/Invoicing/printInvoices2.aspx>

<b>Total Hours</b>	<b>12.90 hrs</b>
<b>Total Attorney Time</b>	<b>\$913.00</b>
<b>Total Amount</b>	<b>\$913.00</b>

<b>Total Hours</b>	<b>13.70 hrs</b>
<b>Total Attorney Time</b>	<b>\$953.00</b>
<b>Total Expenses</b>	<b>\$5,468.85</b>
<b>Total Invoice Amount</b>	<b>\$6,421.85</b>
<b>Previous Balance</b>	<b>\$0.00</b>
<b>Balance (Amount Due)</b>	<b>\$6,421.85</b>

**Notes:**

Jason,

This is for the RLG lawyers we have used as local counsel. I have only billed you what I pay them, to the closest approximation I can come up with. Normally, Jason Fischer bills at \$325 per hour, and Jay DeVoy bills a \$275 per hour. You're getting billed at \$90 and \$50 per hour respectively on this bill. In the future, that may go up or down as the expenses I pay for those guys change. However, the intent is to ensure that they don't cost me anything out-of-pocket, but also that I do not earn any profit from their labor if they do work for you.

That's the \$913.

The remainder is just the expenses that I put on my RLG credit card. I have submitted, through Eric, a separate expense report for that.

I also have a personal expense report. But, that is submitted separately.

# **EXHIBIT 103**

LIBERTY MEDIA HOLDINGS, LLC,	)	Case No.: 2:12-cv-01057-GMN-RJJ
	)	
Plaintiff,	)	ORDER
vs.	)	
	)	
FF MAGNAT LIMITED, <i>d/b/a Oron.com</i> ;	)	
MAXIM BOCHENKO, <i>a/k/a Roman Romanov</i> ;	)	
and JOHN DOES 1-500,	)	
	)	
Defendants.	)	

Before the Court is Plaintiff Liberty Media Holdings, LLC's (hereinafter "Plaintiff") Motion to Enforce Settlement (ECF No. 33). Defendant FF Magnat Limited (hereinafter "Defendant") filed a Response (ECF No. 44), and Plaintiff filed a Reply (ECF No. 66).

The instant case involves a dispute over Defendants' alleged copyright infringement of Plaintiff's works. This Court previously granted Plaintiff's motion for a temporary restraining order against Defendant. (TRO Order, ECF No.11.)<sup>1</sup> Thereafter, on July 1, 2012, attorneys for Plaintiff and Defendant signed a letter memorializing settlement terms in regards to this case and a similar case between these two parties in Hong Kong (hereinafter "Settlement Letter"). (Settlement Letter, Ex. A attached to Mtn to Enforce Settlement, ECF No. 33-1.) The pertinent parts of the settlement letter are as follows:

Page 1 of 8

1. Oron pays Liberty Media \$550,000.

8. Once payment is received by both parties, both proceedings in NV and HK will be dismissed with prejudice, and in the event that Oron breaks any part of the deal, the claims may be reinstated via arbitration after a 30 day "notice and cure" period.

12. Liberty agree to announce publically that after a careful review of the facts they believe Oron is protected by the DMCA safe harbor and that a review of the actual files shows that there never was any child porn on Oron's site.

14. Liberty will immediately, once the terms of the agreement are agreed to issue a letter asking that the HK bank accounts be unfrozen allowing the payment to the Randazza Trust and then to Leaseweb as well as send a letter to Leaseweb asking them to allow Oron ten (10) days to pay as the settlement of the matter is imminent.

15. All parties mutually release

19. If you agree to these terms for your client please sign on the line below and return.

(See *id.*)

On July 2, 2012, Plaintiff sent a letter to Bob Rietjens, Senior Legal Counsel at LeaseWeb, disclosing that the parties were near a settlement and requested that LeaseWeb not terminate the account for www.oron.com due to nonpayment. (Letter to LeaseWeb, Ex. B attached to Mtn to Enforce Settlement, ECF No. 33-2.) On July 3, 2012, the parties filed a Joint Stipulation to Extend Hearing Date and Submission Deadlines so that the parties could "facilitate attempts to narrow the issues in this matter or to come to a mutually beneficial resolution to the dispute." (Stipulation, ECF No. 28.) On July 3, 2012, S.T. Poon & Wong, Defendant FF Magnat Limited's counsel in the Hong Kong matter, delivered a letter to Plaintiff's Hong Kong counsel that states "[w]e are instructed that our client had reached an amicable settlement." (HK Letter, Ex. C attached to Mtn to Enforce Settlement, ECF No. 33-3.)

A dispute arose after the Settlement Letter was signed and after Plaintiff sent the letter to LeaseWeb. E-mails sent between Stevan Lieberman, counsel for Defendant, and Marc Randazza, counsel for Plaintiff, on July 3, 2012, indicate that the parties disputed who was/would

1 be bound by the terms of the Settlement Letter. (*See* Lieberman Decl. ¶¶6-9, ECF No.44-1; E-  
2 mails, Exs. B-E attached to Response, ECF Nos. 44-3-44-6.) Defendant believed that all  
3 defendants, including Mr. Bochenko, would be included in the terms; Plaintiff apparently did not.  
4 (*See id.*) On July 3, 2012, Marc Randazza sent an e-mail to his paralegal, on which Stevan  
5 Lieberman was copied. In this e-mail Randazza instructs his paralegal that they “need to put the  
6 brakes on this. While I am not certain, it appears that settlement is not going to happen...we may  
7 get back on track, but it seems that right now, the settlement we brokered is going off the rails.”  
8 (Email re: Consent Summons, Ex. 1 attached to Reply, ECF No. 66-1.)

9 However, Plaintiff eventually conceded to Defendant’s interpretation of the Settlement  
10 Letter and agreed that the settlement would also apply to Mr. Bochenko. (*See* Text Messages,  
11 Ex. B attached to Reply to Mtn to Seal, ECF No. 41-2; Randazza Decl. ¶¶ 2-7, ECF No. 66-3.)  
12 After discussing the issue with Defendant’s local counsel, Mr. David Kahn, Plaintiff’s counsel  
13 agreed to Defense Counsel’s interpretation and said he would back down from his interpretation  
14 that the settlement was only with Defendant. (*See id.*)

## 15 DISCUSSION

### 16 A. Legal Standard

17 “It is well settled that a district court has the equitable power to enforce summarily an  
18 agreement to settle a case pending before it. However, the district court may enforce only  
19 *complete* settlement agreements.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987) (citations  
20 omitted). “Whether the parties *intended* only to be bound upon the execution of a written,  
21 signed agreement is a factual issue.” *Id.* at 890-91. “In addition to the intent of the parties to  
22 bind themselves, the formation of a settlement contract requires agreement on its *material*  
23 *terms.*” *Id.* at 891. “Because a settlement agreement is a contract, its construction and  
24 enforcement are governed by principles of contract law.” *May v. Anderson*, 119 P.3d 1254, 1257  
25 (Nev. 2005) (footnote omitted).

1 Under Nevada law, “[b]asic contract principles require, for an enforceable contract, an  
2 offer and acceptance, meeting of the minds, and consideration.” *Id.* (footnote omitted). “A valid  
3 contract cannot exist when material terms are lacking or are insufficiently certain and definite.”  
4 *Id.* (footnote omitted). “A contract can be formed, however, when the parties have agreed to the  
5 material terms, even though the contract’s exact language is not finalized until later.” *Id.*  
6 (footnote omitted). Ordinarily, “[w]here a complete contract was made orally, the fact that it  
7 was expected that a written contract would afterwards be signed, embodying the terms of the  
8 oral contract, does not prevent the oral contract from taking effect.” *Micheletti v. Fugitt*, 134  
9 P.2d 99, 104 (Nev. 1943).

10 “In the case of a settlement agreement, a court cannot compel compliance when material  
11 terms remain uncertain.” *May v. Anderson*, 119 P.3d at 1257 (footnote omitted). “The court  
12 must be able to ascertain what is required of the respective parties.” *Id.* (footnote omitted).  
13 “[T]he question of whether a contract exists is one of fact.” *Id.*

14 “[T]he evidence that the parties intended to be presently bound must be convincing and  
15 subject to no other reasonable interpretation.” *Tropicana Hotel Corporation v. Speer*, 692 P.2d  
16 499, 502 (Nev. 1985) (examining manifestations of the parties’ intent regarding the finality of an  
17 oral contract); *see also Mack v. Estate of Mack*, 206 P.3d 98, 108 (Nev. 2009) (concluding that  
18 “substantial evidence exists that shows a meeting of the minds between the parties” “based on  
19 [opposing party]’s clear assent to the terms of the settlement agreement at the hearings held by  
20 [the judge]”).

## 21 B. Analysis

22 The Court first looks at the Settlement Letter to determine if the parties intended to be  
23 presently bound by the terms within. Defendant describes the letter as a “draft term sheet for  
24 review by Plaintiff’s counsel, setting out certain terms of a proposed settlement.” (Response,  
25 4:18-19, ECF No. 44, citing Lieberman Decl. ¶¶ 3-4.) At the top of this letter the subject line

1 reads "Potential Settlement." (Settlement Letter, pg. 1.) The first line of the letter states "[t]his  
2 letter is to memorialize what I believe is the settlement terms we are currently at for Liberty  
3 Media Holdings (LMH)." (*Id.*) The last page of the letter includes the following language: "[i]f  
4 you agree to these terms for your client please sign on the line below and return." (*Id.* at pg. 3.)

5 There is nothing in the Settlement Letter that indicates that Defendant did not intend to be  
6 presently bound by the proposed terms or that a future writing was required. The requirement  
7 for the Plaintiff's attorney to sign and return indicates that the parties do agree that all these  
8 terms are acceptable and binding. If this was only a proposal of terms there probably would not  
9 be a requirement for Plaintiff's counsel to sign and return.

10 Moreover, Defendant does not argue that it did not intend to be bound by the terms once  
11 the letter was signed. Instead Defendant only points to statements made by Plaintiff after  
12 signing the letter that it argues indicates the negotiations were ongoing. Defendant argues that  
13 the settlement was not final because the letter sent by Plaintiff to LeaseWeb states that  
14 "Oron.com is on the eve of making a deal with us." Likewise Defendant argues that the  
15 stipulation submitted to the court to delay the hearing on the permanent injunction motion does  
16 not state that a settlement was reached and that Plaintiff's counsel's comments indicating that  
17 "the settlement we brokered is going off the rails," is further proof of no settlement.

18 However, the Court is not persuaded that any of these statements are sufficient evidence  
19 to indicate that the parties did not intend to be bound by the terms in the signed Settlement  
20 Letter. The comment that "Oron.com is on the eve of making a deal" only indicates that  
21 documents have not been finalized. A contract can be formed so long as the parties agree to the  
22 material terms, even though the contract's exact language is not finalized until later. *See May*,  
23 119 P.3d 1254 at 1257. The stipulation submitted to the Court likewise makes no concession  
24 regarding the state of the settlement negotiations. Finally, the comments that the "settlement we  
25 brokered is going off the rails" including the context of the e-mail actually indicates the

1 contrary, that Defendant was not holding up its end of the bargain.

2 Thus the Court needs to determine if all the material terms of the contract were agreed to  
3 in the Settlement Letter. Defendant claims that it understood the Settlement Letter would  
4 release all defendants from the claims by Plaintiff. The e-mail correspondence that took place  
5 on July 3, 2012, however, demonstrates that Plaintiff believed the Settlement Letter only applied  
6 to Defendant and not Mr. Bochenko. The parties' correspondence on July 3, 2012, makes clear  
7 that the avoidance of future litigation was a goal of Defendant in seeking the settlement. (*See E-*  
8 *mails.*) Defendant argues that it always believed that it could not ensure future litigation arising  
9 from the facts of this case if Mr. Bochenko was not also dismissed with prejudice. "If the  
10 prevention of future litigation is one of the primary goals of a settlement, the essential terms of  
11 the release needed to achieve that goal are material to the settlement agreement." *May*, 119 P.3d  
12 at 1258. Thus it does appear there was no meeting of the minds regarding a material term of the  
13 settlement at the time of the Settlement Letter. However, the issue then becomes whether or not  
14 Plaintiff's latter acceptance of Defendant's proposed interpretation of the settlement term – a  
15 latter "meeting of the minds" – constitutes an enforceable settlement agreement.

16 Plaintiff's counsel orally accepted Defendant's interpretation of the released parties in his  
17 conversation with local counsel David Kahn on July 5, 2012, and also sent the same in a text  
18 message to Mr. Lieberman. (Randazza Decl. attached to Reply, ECF No. 66-3.) There can be no  
19 dispute that there was a meeting of the minds regarding the material term at that point.  
20 Defendant cannot simply disregard Plaintiff's acceptance of its settlement term and argue that  
21 there was never a "meeting of the minds" because there obviously was at some point. It does  
22 not matter that some of the material terms are agreed to orally so long as there was intent to be  
23 bound by the agreement. *See May*, 119 P.3d 1254 at 1257. Defendant cannot plausibly claim  
24 that it no longer intended to be bound by all the other terms of the Settlement Letter when it "got  
25 its way" on the one material term in dispute.



1 The Court finds that there is an enforceable contract. The Settlement Letter written by  
2 Defendant was an offer, accepted by Plaintiff when its counsel signed the letter. There was a  
3 meeting of the minds as to all material terms on July 5, 2012, when Plaintiff agreed that the  
4 settlement would include dismissal with prejudice of Mr. Bochenko. There settlement includes  
5 valuable consideration on the part of both Plaintiff and Defendant. In this case, the Court can  
6 compel compliance because there are no uncertain material terms that remain. Accordingly, the  
7 Court grants Plaintiff's Motion to Enforce Settlement.<sup>2</sup>

8 C. Motion to Seal

9 Plaintiff filed a Motion to Seal (ECF No. 32) its Motion to Enforce Settlement (ECF No.  
10 33) and Motion for Attorney's Fees (ECF No. 34). Plaintiff explains that it wishes to file these  
11 two motions with accompanied exhibits under seal because they include discussions of the  
12 settlement agreement which was supposed to be confidential. Defendant filed a fiery opposition  
13 explaining that the motions should not be filed under seal because the terms had already been  
14 leaked to the media and that Plaintiff has not proffered any other reason to file the documents  
15 under seal. (*See* Opposition, ECF No. 39.) Plaintiff basically withdraws its motion in its Reply.  
16 Plaintiff acknowledges that if Defendant does not want the documents filed under seal then it  
17 will not continue to move for such protection. (*See* Reply, ECF No. 41.) Accordingly, the Court  
18 does not see any reason to grant the Motion to Seal.

19 CONCLUSION

20 IT IS HEREBY ORDERED that Plaintiff Liberty Media Holdings, LLC's Motion to  
21 Enforce Settlement (ECF No. 33) is GRANTED.

22 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment against  
23

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24 <sup>2</sup> The Court recognizes that Defendant has always challenged personal jurisdiction in this case. (*See* Response to PI, ECF No.  
25 71; Mtn to Dismiss, ECF No. 73.) However, Defendant waived personal jurisdiction as to the enforcement of the settlement  
agreement when it agreed to settle this case with Plaintiff. Accordingly, this Court finds that it has personal jurisdiction over  
Defendant for the sole purpose of enforcing the settlement agreement.

1 "FF Magnat Limited, *d/b/a/ Oron.com*" and in favor of Plaintiff in the amount of \$550,000.00,  
2 and execution of that amount shall be issued forthwith.

3 IT IS FURTHER ORDERED that FF Magnat's account shall remain frozen, in order to  
4 satisfy any fee award, which may be sought by Plaintiff, but which must be brought within thirty  
5 (30) days of this Order.

6 IT IS FURTHER ORDERED that this case is DISMISSED with prejudice against  
7 Defendant FF Magnat and Defendant Maxim Bochenko.

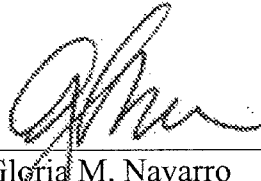
8 IT IS FURTHER ORDERED that Plaintiff's Motion to Seal (ECF No. 32) is DENIED.  
9 All documents filed under seal shall be immediately unsealed by the Clerk.

10 IT IS FURTHER ORDERED that the Motions at ECF Nos. 4, 5, 6, 21, 68, 70 and 73  
11 are DENIED as moot.

12 IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney's Fees (ECF No. 34)  
13 remains under submission with the Court.

14 IT IS FURTHER ORDERED that the motion hearing scheduled for Thursday, August  
15 9, 2012 at 1:30 p.m. in Courtroom 7D, is hereby VACATED.

16 DATED this 7th day of August, 2012.

17  
18   
19 \_\_\_\_\_  
20 Gloria M. Navarro  
21 United States District Judge  
22  
23  
24  
25

# **EXHIBIT 104**

No. 12-16976

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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LIBERTY MEDIA HOLDINGS, LLC, *Plaintiff-Appellant*,

v.

FF MAGNAT LIMITED d/b/a ORON.COM, *Defendant-Appellee*.

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On Appeal from a Judgment of the United States District Court  
for the District of Nevada

Hon. Gloria M. Navarro, United States District Judge  
No. 2:12-cv-01057-GMN-RJJ

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APPELLEE'S MOTION FOR AN ORDER REASSESSING AND  
SUMMARILY AFFIRMING THE AMOUNT OF THE DISTRICT  
COURT'S ATTORNEY FEES AWARD OR, IN THE ALTERNATIVE,  
REMANDING THIS CASE TO THE DISTRICT COURT, FOLLOWING  
THE DISPOSITION OF THIS APPEAL, FOR THE LIMITED PURPOSE  
OF OBTAINING A REASSESSMENT OF THE AMOUNT OF ITS  
ATTORNEY FEES AWARD

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*Attorneys for Appellee*  
*Liberty Media Holdings, LLC*

Appellee Liberty Media Holdings, LLC ("Liberty") hereby moves this Honorable Court for an order reassessing and summarily affirming the amount of the attorney fees award entered in its favor on September 4, 2012 (Dist. Ct. Doc. Nos. 114 and 115) or, in the alternative, remanding this case to the United States District Court for the District of Nevada, following the disposition of this appeal, for the limited purpose of reassessing the amount of its attorney fees award.

This motion is made pursuant to Rule 27 of the Federal Rules of Appellate Procedure and the local rules of this Circuit and is based on the following Points and Authorities, the attached Declaration of Henry Leonard, the attached exhibits, all papers on file with the Court in this action, such further evidence as the Court deems appropriate, and the oral arguments of counsel at the hearing on this motion if requested by the Court.

### **POINTS AND AUTHORITIES**

#### **I. INTRODUCTION.**

Liberty prevailed in the District Court on a motion for attorney fees, but is now in the extraordinary position of having to ask for a reassessment of the amount of attorney fees awarded in its favor. The impetus for this request is Liberty's recent discovery that statements made by its former counsel in support of its motion may have misled the District Court into concluding that it had incurred more attorney fees than it had actually incurred during the underlying litigation.

Concerned that this mistake would perpetuate if it remained silent, Liberty determined that the interests of justice required it to bring this issue to this Court's attention even though: (1) the District Court ultimately based its attorney fees award on a lodestar analysis that did not depend on the amount of attorney fees incurred; and (2) Appellant FF Magnat Limited d/b/a Oron.com ("Oron") has not appealed the amount of that award.<sup>1</sup> Liberty would have raised this issue directly with the District Court once it became apparent, but Oron's filing of its notice of appeal had already divested the District Court of jurisdiction over issues relating to attorney fees. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Liberty respectfully submits that, despite the false impression created by its former counsel's filings in support of the attorney fees motion, the Court should let the amount of fees awarded by the District Court stand. Because the outcome of the lodestar method employed by the District Court required an examination of the reasonableness of the attorney fees expended on Liberty's behalf rather than the reasonableness of the attorney fees actually incurred by Liberty, no further analysis by the District Court is necessary. This Court may exercise its broad remedial powers conferred by 28 U.S.C. § 2601 ("Section 2601") to reassess and summarily

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<sup>1</sup> Oron challenges on appeal the District Court's legal authority to award Liberty attorney fees, but does not dispute the amount of the award. *See Appellant's Opening Brief*, at 2, 24-25 (filed 12/14/12).

affirm the amount of the attorney fees award under these circumstances. If the Court nevertheless finds that this issue calls for the District Court's reassessment of the amount of fees awarded (which it should not), a remand solely for this limited purpose should be ordered following the disposition of this appeal.

## **II. STATEMENT OF RELEVANT FACTS.**

After granting Liberty's motion to enforce its agreement with Oron that settled the underlying litigation, the District Court entered a written order and judgment awarding attorney fees to Liberty in the amount of \$131,797.50 pursuant to Section 505 of the Copyright Act ("Section 505"). *See* Exhibit 1, at 3:17-18, 8:21-22, 9:14-16; Exhibit 2. The District Court exercised its discretion to grant such relief because Liberty was the prevailing party under Section 505 and an attorney fees award would further the purposes of the Copyright Act. *See* Exhibit 1, at 4:9-7:19.

Upon finding that Liberty's recovery of attorney fees was warranted, the District Court proceeded to calculate the amount of its award. *See id.* at 7:20-9:12. References to the charges that Liberty claimed to have "incurred" for the legal services rendered by its attorneys, the Randazza Legal Group, appeared throughout the papers filed by that counsel and, in turn, throughout the District Court's analysis. The District Court, for example, stated:

- (1) "To pursue this case, Plaintiff enlisted Randazza Legal Group

and *incurred charges* ranging from \$400-\$500 per hour for partners, \$350 per hour for of counsel, \$325 per hour for associate attorneys, and \$125 per hour for law clerks," [Exhibit 1, at 3:2-5 (emphasis added); *see also id.* at 8:12-14 (same)];

- (2) "The resolution of this case required 325.90 labor hours from Randazza Legal Group, resulting in Plaintiff *incurring* \$134,910.00 in attorney fees and \$64,911.50 in costs," [*Id.* at 3:5-7 (emphasis added)];
- (3) "On August 26, 2012, Plaintiff supplemented its original request for seeking attorneys' fees *incurred* in attempting to satisfy the judgment against Defendant," [*Id.* at 3:8-10 (emphasis added)]; and
- (4) "[T]he hourly rates that Plaintiff's attorneys *charged* are reasonable rates in the Las Vegas legal market," [*Id.* at 8:11-12 (emphasis added)].

This confusion occurred through no fault of the District Court, but rather was entirely the result of the filings made by Liberty's former counsel in support of the attorney fees motion.

Following Oron's commencement of this appeal, Liberty learned that various assertions made in support of its attorney fees motion apparently led the District



Court to misconstrue the extent of the attorney fees that it had actually incurred in the underlying litigation. For instance, Liberty's motion stated:

- (1) Liberty had "*incurred*" attorney fees "worth" \$134,910.00 based on "325.90 total labor hours," [Exhibit 3, at 4:25-26 (emphasis added)];
- (2) The \$199,821.50 in attorney fees and costs sought by Liberty "was reached by adding Liberty's \$64,911.50 in costs to the \$134,910 *incurred* by Liberty's attorneys and legal assistants in this matter, at their *regular* hourly rates of \$500, \$400, \$350, \$325, and \$125 per hour, respectively," [*Id.* at 5:2-4 (emphasis added)];
- (3) "The fees counsel *charged* Liberty in this matter were *customary* and, like other enforcement actions of this nature, *accrued on an hourly basis*," [*Id.* at 8:1-2 (emphasis added)];
- (4) Liberty *incurred* Randazza Legal Group's *customary fees that are regularly charged to all clients*: Marc Randazza, owner, at \$500 per hour; Ronald Green, partner, at \$400 per hour; Jason A. Fischer, of counsel, at \$350 per hour; J. Malcolm DeVoy, associate, at \$325 per hour; and Laura Tucker, law clerk, at \$125 per hour," [*Id.* at 8:2-5 (emphasis added)]; and

- (5) "In the above-captioned matter, Randazza Legal Group *regularly billed Liberty* for their services, calculated based on the *attorneys' standard hourly rates*," [*Id.* at 8:7-8 (emphasis added)].

Liberty's motion was supported by: (1) the affidavit of a Randazza Legal Group attorney, which stated that "[m]ultiplying the appropriate rate by the hours their respective user spent working on this matter, the total attorney's fees *incurred* representing Liberty in this matter are \$134,910.00," [Exhibit 4, ¶ 28, at 4:23-24 (emphasis added)]; and (2) the declaration of an attorney fees expert, which concluded that "[t]he rates and hours Liberty *incurred* in this case" and "the rates *charged* by Randazza Legal Group" to Liberty were reasonable.<sup>2</sup> See Exhibit 5, ¶ 11, at 2:26-3:2; ¶ 21, at 4:11; ¶ 23, at 4:20 (emphasis added).

Liberty made similar assertions in a subsequently filed supplement to its attorney fees motion that sought an additional \$15,142.50 in fees, for a total of \$150,052.50 in attorney fees, relating to legal services made necessary by Oron's failure to abide by the terms of the parties' agreement that settled the underlying action.<sup>3</sup> See Exhibit 7. These statements included:

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<sup>2</sup> Liberty's memorandum of law in support of its motion also referred to attorney fees "incurred." See Exhibit 6, at 3:18, 4:24, 5:24, 6:21, 7:23.

<sup>3</sup> Liberty relatedly observed in its reply in support of its attorney fees motion that "the fees *incurred* after the settlement agreement were substantial." See Exhibit 9, at 1:28 (emphasis added).

- (1) "In its renewed motion, Liberty sought nearly \$200,000 in attorneys' fees and costs that it *incurred* in the course of litigation – much of which *accrued* after the parties had entered into a valid and binding settlement agreement," [*Id.* at 1:27-2:2 (emphasis added)];
- (2) "Liberty has *incurred* an additional \$15,142.50 in attorney's fees," [*Id.* at 2:5-6 (emphasis added)];
- (3) "In responding to Oron's actions following the entry of judgment, Liberty has *incurred* an additional 40 hours of attorney time, at a cost of \$15,142.50 just between August 10 and 25 alone," [*Id.* at 2:8-9 (emphasis added)];
- (4) "As Oron caused, and continues to cause, *the accrual of* these subsequent attorneys' fees, their burden should fall on Oron, rather than Liberty," [*Id.* at 3:10-11 (emphasis added)]; and
- (5) "Oron (and its counsel) [should be] ordered to *repay* Liberty its [total of] \$214,964.00 in attorney's fees and costs," [*Id.* at 3:23-25 (emphasis added)].

Liberty supported its supplemental attorney fees request with the affidavit of a Randazza Legal Group attorney, which stated that Liberty had been "forced to *incur* more than \$15,000 in additional legal fees responding to Oron's ongoing

attempts to avoid performance of its obligations under the settlement agreement with Liberty." *See* Exhibit 8, ¶ 7, at 2:22-24 (emphasis added).

Despite these various assertions, Liberty neither incurred nor was charged attorney fees in the amount stated in support of its motion. Marc Randazza, Esq. of the Randazza Legal Group served as Liberty's general counsel during the course of the underlying litigation, and in that capacity was a salaried employee of Liberty.<sup>4</sup> *See* Leonard Declaration, ¶ 5. Mr. Randazza consequently did not charge Liberty on an hourly basis for his own services in the Oron matter. *See id.* Mr. Randazza also charged Liberty reduced hourly rates for the legal services provided by others in his firm. *See id.*, ¶ 6. Thus, while the legal services rendered on Liberty's behalf were "worth" a total of \$150,052.50, as maintained in Liberty's motion and related supplement, Liberty did not actually incur attorney fees in that amount at the Randazza Legal Group's regular hourly rates or otherwise.

While the District Court focused on the attorney fees that Liberty claimed to have incurred, the reasonableness of the fee request ultimately provided the basis for its award. *See* Exhibit 1, at 7:20-9:12. To make this determination, the District Court undertook a lodestar analysis through which it concluded that the Randazza Legal Group's hourly billing rates for this matter were reasonable in the Las Vegas legal market, found that most of the hours claimed were recoverable, and decided

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<sup>4</sup> Liberty advised the District Court in its attorney fees motion that Mr. Randazza served as its general counsel. *See* Exhibit 3, at 9:20-21.

that the lodestar factors required no upward or downward adjustment. *See id.* at 7:20-9:12. Based on these considerations, the District Court awarded Liberty attorney fees in the amount of \$131,797.50 and entered judgment accordingly. *See id.* at 3:17-18, 8:21-22, 9:14-16; Exhibit 2.

### III. ARGUMENT.

#### A. This Court Has Authority Under 28 U.S.C. § 2106 To Reassess And Summarily Affirm The Amount Of The District Court's Attorney Fees Award In Order To Further The Interests Of Justice.

Even though Oron has not appealed the amount of the District Court's attorney fees award, Liberty recognizes that the interests of justice support a reassessment of that amount. Liberty's concern is that its former counsel's filings in support of its attorney fees motion caused the District Court to misapprehend the amount of attorney fees that it had incurred or been charged in the underlying litigation. *See Black's Law Dictionary*, at 782 (8th ed. 2004)(defining "incur" as "[t]o suffer or bring on oneself (a liability or expense)"); *see also id.* at 248 (defining "charge" as "[t]o demand a fee; to bill"). The relief now requested by Liberty will ensure that any misconception caused by its motion does not taint the attorney fees award properly entered in its favor by the District Court.<sup>5</sup>

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<sup>5</sup> The Court should not construe this motion as an acknowledgement that the amount of attorney fees awarded to Liberty by the District Court was somehow excessive.

A remand of this issue for consideration by the District Court is unwarranted, however, because it would result in an unnecessary additional proceeding. Any misunderstanding resulting from Liberty's assertions regarding its attorney fees incurred in the underlying litigation should have no bearing on the disposition of its motion because the actual fees charged for legal services rendered on behalf of a prevailing party do not set the parameters of a reasonable attorney fees award. The record below confirms that the District Court properly premised its attorney fees award on the reasonableness of Liberty's fee request as determined using the lodestar method. *See* Exhibit 1, at 7:20-9:12; *see also Lahiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216, 1222-23 (9th Cir. 2010)(affirming the use of a traditional lodestar analysis to ascertain a reasonable attorney fees award in a copyright infringement action); *see generally Hensley v. Eckerhart*, 461 U.S. 424, 433-37 (1983)(discussing the lodestar method).

A "lodestar" is calculated by multiplying the number of hours the prevailing party "reasonably expended" on the litigation by a reasonable hourly rate. *See McGrath v. County of Nevada*, 67 F.3d 248, 252 (9th Cir. 1995). The resulting lodestar figure, which is presumptively reasonable, may then be adjusted upward or downward based on a variety of factors.<sup>6</sup> *See id.* The outcome of a lodestar

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<sup>6</sup> Because reasonable attorney fees are "calculated according to the prevailing market rates in the relevant community," [*Blum v. Stenson*, 465 U.S. 886, 895 (1984)], fees may be awarded at such rates for services provided by in-

analysis therefore does not depend in any way on whether the party seeking an attorney fees award had actually incurred or been charged the subject fees.

Given that the amount of attorney fees actually incurred by Liberty was not determinative and that the District Court has already found that the attorney fees claimed by Liberty were reasonable as required by Section 505, no involvement by the District Court in a reassessment of the amount of its attorney fees award is necessary. *See* Exhibit 1, at 7:20-9:12; *see also* 17 U.S.C. § 505 (authorizing a court to "award a reasonable attorney's fee to the prevailing party"). This motion instead presents an issue that is appropriate for disposition by this Court under its expansive authority, conferred by Section 2106, to provide relief "as may be just under the circumstances." *See Nonnette v. Small*, 316 F.3d 872, 878 (9th Cir. 2002)("[I]ike the Supreme Court, we have statutory authority to provide such relief "as may be just under the circumstances").

This Court has long recognized that it "has the power to make such disposition of [a] case as justice may require." *See Bank of China v. Wells Fargo Bank & Union Trust Co.*, 190 F.2d 1010, 1012 (9th Cir. 1951); *see also Haynes v.*

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house counsel as well as by attorneys and legal staff paid at below market rates. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 284-89 (1989)(legal staff); *Brandenberger v. Thompson*, 494 F.2d 885, 889-90 (9th Cir. 1974)(pro bono counsel); *Broadcast Music, Inc. v. R Bar of Manhattan, Inc.*, 919 F.Supp. 656, 661 (S.D.N.Y. 1996)(in-house counsel). The District Court has already found that the Randazza Legal Group's hourly rates in this case were "reasonable" for the Las Vegas market. *See* Exhibit 1, at 8:11-12.

*United States*, 390 U.S. 85, 101 (1968)("[w]e have plenary authority under 28 U.S.C. § 2106 to make such disposition of the case 'as may be just under the circumstances'"). Liberty respectfully submits that the Court should exercise this authority and summarily affirm the amount of attorney fees awarded by the District Court, which has not been appealed by Oron, on the basis that the amount of attorney fees actually incurred by Liberty was inconsequential to the District Court's lodestar analysis.

**B. If The Court Declines To Exercise Its Authority Under Section 2601, The Interests Of Justice Support A Limited Remand, Following The Disposition Of This Appeal, To Allow The District Court To Reassess The Amount Of Its Attorney Fees Award.**

Any remand ordered for the limited purpose of obtaining from the District Court a reassessment of the amount of its attorney fees award is unnecessary until after a decision has been rendered on Oron's appeal. Oron does not appeal the amount of attorney fees granted to Liberty, but rather appeals whether the District Court had legal authority to award Liberty attorney fees in any amount. *See* Oron's Opening Brief, at 2, 24-25 (filed 12/14/12). Not only can the Court decide the question presented by Oron without ordering an immediate remand, it would promote judicial economy for the Court not to order an immediate remand given that the parties are in the process of briefing this issue. Moreover, while Liberty is confident that it will demonstrate on appeal that the District Court properly exercised its discretion under Section 505 to award attorney fees in this matter, the



determination of whether Liberty may recover attorney fees necessarily is a prerequisite to the determination of the appropriate amount of such a recovery. Under these circumstances, any remand ordered by the Court for the limited purpose of allowing the District Court to reassess the amount of its attorney fees award in Liberty's favor should occur following the disposition of Oron's appeal.

#### IV. CONCLUSION.

For the foregoing reasons, Liberty respectfully requests that the Court grant the relief requested by this motion in its entirety.

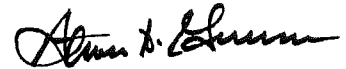
Dated this 13th day of February, 2013.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By: /s/ Mitchell J. Langberg  
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# **EXHIBIT 3**

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*Attorneys for Defendants Liberty Media Holdings, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MARC J. RANDAZZA, P.A., a Florida  
professional association doing business as  
RANDAZZA LEGAL GROUP,

Plaintiff,

v.

LIBERTY MEDIA HOLDINGS, LLC, a  
California limited-liability company doing  
business as Corbin Fisher

Defendant.

Case No. A-12-673275-C

Dept. No. VIII

**DEFENDANT LIBERTY MEDIA HOLDINGS,  
LLC'S ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIM**

Defendant/Counterclaimant Liberty Media Holdings, LLC ("Liberty"), by and through its attorneys of record, Brownstein Hyatt Farber Schreck, LLP, hereby answers and responds to the allegations of Plaintiff/Counterdefendant Marc J. Randazza, P.A., d/b/a Randazza Legal Group's ("RLG") First Amended Complaint as follows:

**I. Introduction**

1. Answering Paragraph 1 of RLG's First Amended Complaint, Liberty admits that RLG is a law firm. Liberty further admits RLG obtained a temporary restraining order of Oron's funds without a hearing, a settlement of \$550,000, judicial enforcement of that settlement, collection of that amount, and an attorney's fees award of more than \$131,797.00 in a copyright infringement matter before the United States District Court for the District of Nevada (the "Oron

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1 Litigation"). Liberty generally and specifically denies all other allegations contained in said  
2 paragraph.

3 2. Answering Paragraph 2 of RLG's First Amended Complaint, Liberty admits that  
4 RLG represented Liberty in copyright infringement litigation in Nevada, Florida, Arizona,  
5 California, Texas, and Wisconsin. Liberty further admits that it paid RLG for its services. Liberty  
6 generally and specifically denies all other allegations contained in said paragraph.

7 3. Answering Paragraph 3 of RLG's First Amended Complaint, Liberty generally and  
8 specifically denies the allegations contained in said paragraph.

9 4. Answering Paragraph 4 of RLG's First Amended Complaint, Liberty generally and  
10 specifically denies the allegations contained in said paragraph.

## 11 II. Jurisdiction and Venue

12 5. Answering Paragraph 5 of RLG's First Amended Complaint, Liberty admits the  
13 allegations contained in said paragraph.

14 6. Answering Paragraph 6 of RLG's First Amended Complaint, Liberty admits the  
15 allegations contained in said paragraph.

16 7. Answering Paragraph 7 of RLG's First Amended Complaint, Liberty admits the  
17 allegations contained in said paragraph.

18 8. Answering Paragraph 8 of RLG's First Amended Complaint, Liberty admits the  
19 allegations contained in said paragraph.

## 20 III. Parties

### 21 A. Plaintiff

22 9. Answering Paragraph 9 of RLG's First Amended Complaint, Liberty admits the  
23 allegations contained in said paragraph.

24 10. Answering Paragraph 10 of RLG's First Amended Complaint, Liberty admits that  
25 RLG previously represented it. Liberty is without sufficient knowledge or information upon  
26 which to form a belief as to the truth of the allegations contained in said paragraph, and therefore  
27 denies all other allegations contained in said paragraph.  
28

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11. Answering Paragraph 11 of RLG's First Amended Complaint, Liberty admits the allegations contained in said paragraph.

**A. The Defendant**

12. Answering Paragraph 12 of RLG's First Amended Complaint, Liberty admits the allegations contained in said paragraph.

13. Answering Paragraph 13 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegation that it produces adult entertainment. Liberty admits the remaining allegations contained in said paragraph.

14. Answering Paragraph 14 of RLG's First Amended Complaint, Liberty admits that LMH used RLG's services to engage in litigation against users of BitTorrent who unlawfully distributed LMH's copyright content, video-playing "tube" sites that unlawfully displayed LMH's copyrighted content, and one-click-hosting sites known as "cyber lockers" that also unlawfully distributed LMH's copyrighted content. Liberty denies all other allegations contained in said paragraph.

15. Answering Paragraph 15 of RLG's First Amended Complaint, , Liberty generally and specifically denies the allegations contained in said paragraph.

**IV. Facts Common to All Claims for Relief**

**A. The Relationship between RLG and Liberty.**

16. Answering Paragraph 16 of RLG's First Amended Complaint, Liberty is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore denies each and every allegation contained therein.

17. Answering Paragraph 17 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

18. Answering Paragraph 18 of RLG's First Amended Complaint, Liberty admits that through RLG, LMH has engaged in litigation in Massachusetts, Pennsylvania, Florida, Texas and Wisconsin, Nevada, Arizona, and California. Liberty generally and specifically denies all other allegations contained in said paragraph.

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1           19.     Answering Paragraph 19 of RLG's First Amended Complaint, Liberty generally  
2     and specifically denies the allegations contained in said paragraph.

3           20.     Answering Paragraph 20 of RLG's First Amended Complaint, Liberty generally  
4     and specifically denies the allegations contained in said paragraph.

5           21.     Answering Paragraph 21 of RLG's First Amended Complaint, Liberty generally  
6     and specifically denies the allegations contained in said paragraph.

7           22.     Answering Paragraph 22 of RLG's First Amended Complaint, Liberty generally  
8     and specifically denies the allegations contained in said paragraph.

9           23.     Answering Paragraph 23 of RLG's First Amended Complaint, Liberty generally  
10    and specifically denies the allegations contained in said paragraph.

11           **B.     The Oron Litigation**

12           24.     Answering Paragraph 24 of RLG's First Amended Complaint, Liberty admits the  
13    allegations contained in said paragraph.

14           25.     Answering Paragraph 25 of RLG's First Amended Complaint, Liberty is without  
15    sufficient knowledge or information upon which to form a belief as to the truth of the allegations  
16    contained in said paragraph, and therefore denies each and every allegation contained therein.

17           26.     Answering Paragraph 26 of RLG's First Amended Complaint, Liberty admits the  
18    allegations contained in said paragraph.

19           27.     Answering Paragraph 27 of RLG's First Amended Complaint, Liberty admits the  
20    allegations contained in said paragraph.

21           28.     Answering Paragraph 28 of RLG's First Amended Complaint, Liberty admits the  
22    allegations contained in said paragraph.

23           29.     Answering Paragraph 29 of RLG's First Amended Complaint, Liberty admits the  
24    allegations contained in said paragraph.

25           30.     Answering Paragraph 30 of RLG's First Amended Complaint, Liberty is without  
26    sufficient knowledge or information upon which to form a belief as to the truth of the allegations  
27    contained in said paragraph, and therefore denies each and every allegation contained therein.  
28

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1           31.     Answering Paragraph 31 of RLG's First Amended Complaint, Liberty admits the  
2     allegations contained in said paragraph.

3           32.     Answering Paragraph 32 of RLG's First Amended Complaint, Liberty admits the  
4     allegations contained in said paragraph.

5           33.     Answering Paragraph 33 of RLG's First Amended Complaint, Liberty admits the  
6     allegations contained in said paragraph.

7           34.     Answering Paragraph 34 of RLG's First Amended Complaint, Liberty admits that  
8     the Court entered an order on August 7, 2012 granting LMH's motion to enforce its settlement  
9     agreement with FF Magnat Limited, and entering judgment of \$550,000 in LMH's favor against  
10    FF Magnat Limited. Liberty is without sufficient knowledge or information upon which to form  
11    a belief as to the truth of the allegations contained in said paragraph, and therefore denies all other  
12    allegations contained in said paragraph.

13          35.     Answering Paragraph 35 of RLG's First Amended Complaint, Liberty admits that  
14    on August 21, 2012, RLG filed a motion seeking an order requiring PayPal, Incorporated – a third  
15    party payment processor holding hundreds of thousands of dollars of FF Magnat Limited's frozen  
16    accounts to LMH, via RLG's trust account. Liberty is without sufficient knowledge or  
17    information upon which to form a belief as to the truth of the allegations contained in said  
18    paragraph, and therefore denies all other allegations contained in said paragraph.

19          36.     Answering Paragraph 36 of RLG's First Amended Complaint, Liberty admits the  
20    allegations contained in said paragraph.

21          37.     Answering Paragraph 37 of RLG's First Amended Complaint, Liberty is without  
22    sufficient knowledge or information upon which to form a belief as to the truth of the allegations  
23    contained in said paragraph, and therefore denies each and every allegation contained therein.

24          38.     Answering Paragraph 38 of RLG's First Amended Complaint, Liberty is without  
25    sufficient knowledge or information upon which to form a belief as to the truth of the allegations  
26    contained in said paragraph, and therefore denies each and every allegation contained therein.

27          39.     Answering Paragraph 39 of RLG's First Amended Complaint, Liberty admits the  
28    allegations contained in said paragraph.

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1           40.     Answering Paragraph 40 of RLG's First Amended Complaint, Liberty admits the  
2     allegations contained in said paragraph.

3           41.     Answering Paragraph 41 of RLG's First Amended Complaint, Liberty is not  
4     required to respond to the allegations as the documents referred to therein speak for themselves.  
5     To the extent said paragraph is construed to require a response, Liberty denies the allegations  
6     therein.

7           42.     Answering Paragraph 44 of RLG's First Amended Complaint, Liberty is not  
8     required to respond to the allegations as the documents referred to therein speak for themselves.  
9     To the extent said paragraph is construed to require a response, Liberty denies the allegations  
10    therein.

11          43.     Answering Paragraph 43 of RLG's First Amended Complaint, Liberty is not  
12    required to respond to the allegations as the documents referred to therein speak for themselves.  
13    To the extent said paragraph is construed to require a response, Liberty denies the allegations  
14    therein.

15          44.     Answering Paragraph 44 of RLG's First Amended Complaint, Liberty is not  
16    required to respond to the allegations as the documents referred to therein speak for themselves.  
17    To the extent said paragraph is construed to require a response, Liberty denies the allegations  
18    therein.

19          45.     Answering Paragraph 45 of RLG's First Amended Complaint, Liberty generally  
20    and specifically denies the allegations contained in said paragraph.

21          46.     Answering Paragraph 46 of RLG's First Amended Complaint, Liberty generally  
22    and specifically denies the allegations contained in said paragraph.

23           **C.     Liberty Breaches Its Contract With RLG**

24          47.     Answering Paragraph 47 of RLG's First Amended Complaint, Liberty generally  
25    and specifically denies the allegations contained in said paragraph.

26          48.     Answering Paragraph 48 of RLG's First Amended Complaint, Liberty admits the  
27    allegations contained in said paragraph.  
28



1           49.     Answering Paragraph 49 of RLG's First Amended Complaint, Liberty admits the  
2     allegations contained in said paragraph.

3           50.     Answering Paragraph 50 of RLG's First Amended Complaint, Liberty generally  
4     and specifically denies the allegations contained in said paragraph.

5           51.     Answering Paragraph 51 of RLG's First Amended Complaint, Liberty generally  
6     and specifically denies the allegations contained in said paragraph.

7                               **First Claim for Relief: Breach of Contract**

8                                       **Against Liberty**

9           52.     Answering Paragraph 52 of RLG's First Amended Complaint, Liberty repeats and  
10    realleges its answers to paragraphs 1 through 51 above, and incorporates the same herein by  
11    reference as though fully set forth.

12          53.     Answering Paragraph 53 of RLG's First Amended Complaint, Liberty generally  
13    and specifically denies the allegations contained in said paragraph.

14          54.     Answering Paragraph 54 of RLG's First Amended Complaint, Liberty generally  
15    and specifically denies the allegations contained in said paragraph.

16          55.     Answering Paragraph 55 of RLG's First Amended Complaint, Liberty generally  
17    and specifically denies the allegations contained in said paragraph.

18          56.     Answering Paragraph 56 of RLG's First Amended Complaint, Liberty generally  
19    and specifically denies the allegations contained in said paragraph.

20                               **Second Claim for Relief: Unjust Enrichment / Quantum Meruit**

21                                       **Against Liberty**

22          57.     Answering Paragraph 57 of RLG's First Amended Complaint, Liberty repeats and  
23    realleges its answers to paragraphs 1 through 56 above, and incorporates the same herein by  
24    reference as though fully set forth.

25          58.     Answering Paragraph 58 of RLG's First Amended Complaint, Liberty generally  
26    and specifically denies the allegations contained in said paragraph.

27          59.     Answering Paragraph 59 of RLG's First Amended Complaint, Liberty generally  
28    and specifically denies the allegations contained in said paragraph.

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60. Answering Paragraph 60 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

61. Answering Paragraph 61 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

62. Answering Paragraph 62 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

63. Answering Paragraph 63 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

64. Answering Paragraph 64 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

65. Answering Paragraph 65 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

66. Answering Paragraph 66 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

### **Third Claim for Relief: Account Stated**

#### **Against Liberty**

67. Answering Paragraph 67 of RLG's First Amended Complaint, Liberty repeats and realleges its answers to paragraphs 1 through 66 above, and incorporates the same herein by reference as though fully set forth.

68. Answering Paragraph 68 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

69. Answering Paragraph 69 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

70. Answering Paragraph 70 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

71. Answering Paragraph 71 of RLG's First Amended Complaint, Liberty generally and specifically denies the allegations contained in said paragraph.

1           72.     Answering Paragraph 72 of RLG's First Amended Complaint, Liberty generally  
2     and specifically denies the allegations contained in said paragraph.

3                                 **AFFIRMATIVE DEFENSES**

- 4           1.     RLG has failed to state a claim upon which relief can be granted.
- 5           2.     RLG's claims for relief are barred, in whole or in part, by the equitable doctrines of  
6     waiver, estoppel, and laches.
- 7           3.     RLG has unclean hands.
- 8           4.     RLG's claims for relief are barred by fraud.
- 9           5.     RLG has not suffered any damages.
- 10          6.     RLG's prior material breach of the contract it seeks to enforce forgives any  
11     performance by Liberty.

12          7.     All possible affirmative defenses may not have been alleged herein insofar as  
13     sufficient facts were not available after reasonable inquiry upon the filing of this Answer and,  
14     therefore, Liberty reserves all rights to amend this Answer to allege additional affirmative  
15     defenses if subsequent investigation so warrants.

16                 WHEREFORE, having fully answered RLG's First Amended Complaint, Liberty  
17     respectfully demands judgment in its favor as follows:

- 18          A.     That RLG's First Amended Complaint be dismissed with prejudice, with RLG  
19     taking nothing thereby;
- 20          B.     That Liberty be awarded its costs incurred herein;
- 21          C.     That Liberty be awarded its reasonable attorneys' fees incurred herein; and
- 22          D.     That Liberty be awarded such other and further relief as the Court deems just and  
23     proper.

24     ///

25     ///

26     ///

27

28

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## COUNTERCLAIM

Defendant/Counterclaimant Liberty Media Holdings, LLC ("Liberty"), by and through its attorneys of record, Brownstein Hyatt Farber Schreck, LLP, hereby states its counterclaim against Plaintiff/Counterdefendant Randazza Legal Group ("RLG") and alleges as follows:

### **THE PARTIES**

1. Liberty is a California limited liability company with its primary place of business in Clark County, Nevada,

2. Liberty holds certain intellectual property produced by its affiliated entity, Excelsior Media Corp. ("Excelsior").

3. Liberty is informed and believes, and thereon alleges, that RLG is a professional association organized and existing under the laws of the State of Florida that does business in Clark County, Nevada, as Randazza Legal Group.

4. Liberty is informed and believes, and thereon alleges, that one of RLG's principals is Marc Randazza, Esq. ("Randazza"), a resident of Clark County, Nevada.

### **GENERAL ALLEGATIONS**

#### **Randazza's Full-Time And Salaried Position As General Counsel Of Liberty's Affiliate**

5. Prior to and through mid-2009, Randazza worked for the law firm that served as outside counsel to Excelsior.

6. During that time, he solicited Liberty for possible employment as general counsel.

7. Subsequently, in June 2009, Excelsior hired Randazza to work as its general counsel.

8. Randazza began working as general counsel for Excelsior on or about June 24, 2009, and was a full time salaried employee for the duration of his employment.

#### *Randazza's Duties As General Counsel*

9. In connection with Randazza's employment with Excelsior, on or about June 10, 2009, the parties executed a written employment agreement, entitled Contract for Employment of Corporate General Counsel ("Randazza Agreement").

10. As general counsel for Excelsior, Randazza performed a number of duties,

1 including enforcement of intellectual property rights for the copyrighted content produced by  
2 Excelsior and owned by Liberty.

3 11. Randazza's duty to enforce Liberty's intellectual property rights included advising  
4 Liberty on enforcement strategies.

5 12. As general counsel, Randazza was also tasked with filing and prosecuting lawsuits,  
6 where appropriate, against those who infringed Liberty's rights in its copyrighted material.

7 13. In connection with the Randazza Agreement, Randazza executed a Confidentiality  
8 and Inventions Assignment Agreement ("Confidentiality Agreement").

9 14. The Confidentiality Agreement provided, among other things, that Randazza's  
10 employment was conditioned on his agreement to keep company information confidential.

11 *Randazza's Agreement To Limit Outside Legal Work*

12 15. Under the Randazza Agreement, notwithstanding that Randazza was a full time  
13 salaried employee of Excelsior, Excelsior agreed to allow Randazza to pursue limited outside  
14 employment.

15 16. Specifically, Excelsior permitted Randazza to provide professional services to a  
16 limited number of outside clients on an ongoing basis, as long as such services were rendered  
17 without legal or professional conflict with Excelsior.

18 17. Randazza's outside employment was further limited under the Randazza  
19 Agreement to ensure that such activities did not violate any professional ethics standards or his  
20 Confidentiality Agreement.

21 18. Randazza agreed that any outside employment he pursued would be rendered  
22 during non-working hours, on vacation days or on unpaid leave days.

23 19. Randazza further agreed that Excelsior's work would always take priority over any  
24 outside projects he pursued.

25 20. Additionally, the Randazza Agreement contemplated that Randazza would pursue  
26 pro bono work on behalf of Excelsior, generally consisting of free speech and civil rights cases.

27 21. Any pro bono work Randazza pursued required approval by Excelsior to ensure  
28 that the work was in Excelsior's best interest.

22. When Excelsior approved pro bono work, Randazza was required to coordinate his efforts with Excelsior's public relations staff to maximize the benefit to Excelsior for its community service.

*Randazza's Generous Compensation As General Counsel*

23. Excelsior provided Randazza significant compensation and benefits during the course of his employment, including:

- a. a starting annual salary of over \$200,000;
- b. periodic raises that resulted in a salary increase of more than twenty-five percent before Randazza's employment ceased;
- c. bonuses, such as year-end bonuses, incentive program bonuses and profit-sharing bonuses under Excelsior's bonus plans;
- d. payment of Randazza' bar preparation courses and bar application fees in California, Nevada and Arizona;
- e. payment of Randazza's annual bar dues for all states in which he is licensed, namely: Massachusetts, California, Nevada, Arizona and Florida;
- f. payment of Randazza's annual dues for professional associations and travel to conferences for such associations;
- g. payment of Randazza's relocation expenses from Florida to California;
- h. payment of Randazza's relocation expenses from California to Nevada;
- i. payment for work-related equipment, including, but not limited to, cellular phones and laptops;
- j. health benefits for Randazza and his family;
- k. retirement benefits for Randazza;
- l. paid time off starting at fifteen days per year and eventually reaching four weeks per year before Randazza's employment ceased, in addition to certain federal holidays;
- m. a flexible schedule that allowed Randazza to work remotely when he so desired; and

1 n. use of Excelsior's private gym facility for Randazza and his wife, including  
2 personal training.

3 24. In addition to his regular salary and other benefits, Randazza proposed and Liberty  
4 agreed that he would receive a non-discretionary bonus of *twenty-five percent* of any settlement  
5 funds paid to Excelsior in connection with legal matters, irrespective of whether formal litigation  
6 was commenced.

7 **RLG's Performance Of Legal Services For Liberty**

8 25. Liberty is informed and believes, and thereon alleges, that Randazza formed the  
9 RLG entity after he accepted his position with Excelsior.

10 26. In or about Fall 2010, Randazza informed Liberty that its interests would be best  
11 served if Randazza prosecuted lawsuits and performed other enforcement tasks in the name of his  
12 firm, RLG, so that litigants would not seek Liberty's confidential information through discovery.

13 27. Randazza also indicated that, given the number of cases filed on Liberty's behalf,  
14 he could no longer handle his litigation duties as general counsel for Excelsior without additional  
15 assistance.

16 28. On Randazza's advice and request, Liberty assented to the proposal, and in or  
17 around January 2011 RLG began filing and prosecuting copyright infringement lawsuits on  
18 Liberty's behalf.

19 29. Significantly, RLG never proposed or presented a written fee agreement to  
20 Liberty.

21 30. Thus, the representation agreement between RLG and Liberty was an oral  
22 agreement.

23 31. Nonetheless, through Randazza, its principal, RLG agreed and memorialized in  
24 writing that it would only charge Liberty its hourly out-of-pocket cost for its attorneys and  
25 paralegals' services, rather than their regular hourly rates.

26 32. The parties' express intent, as communicated by RLG in writing, was to ensure that  
27 RLG would not profit from the work that it did on Liberty's behalf.

28 33. At no time did RLG inform Liberty that the fee arrangement between them was



1 contingent on either Randazza's continued employment by Excelsior or payment within a certain  
2 period of time.

3 34. Over the course of its representation, RLG was counsel of record for Liberty in a  
4 number of copyright infringement lawsuits filed in various jurisdictions.

5 35. Among others, RLG filed lawsuits on Liberty's behalf against website operators  
6 who profited from unauthorized large-scale distribution of Liberty's copyrighted material over the  
7 Internet.

8 36. RLG also filed lawsuits on Liberty's behalf against individuals who distributed  
9 Liberty's copyrighted material over the Internet without authorization ("Torrent Suits").

10 37. Throughout RLG's representation, Randazza held himself out as a representative  
11 of RLG, rather than a full time salaried employee of Excelsior or Liberty.

#### 12 **RLG'S Lack of Candor To Tribunals**

13 38. During the course of its representation, RLG misrepresented the nature of the  
14 relationships and agreements between it, Randazza and Liberty.

15 39. RLG failed to inform several United States District Courts that Randazza was a  
16 salaried employee of Liberty's affiliated entity, Excelsior, in connection with requests for  
17 attorneys' fees.

18 40. In fact, RLG made statements, sometimes under oath, that were certain to cause  
19 those courts to believe contrary circumstances that were false.

20 41. One of the cases in which RLG represented Liberty is *Liberty Media Holdings,*  
21 *LLC v. FF Magnat* ("Oron Case"), currently on appeal from the United States District Court for  
22 the District of Nevada ("District Court"), Case No. 2:11-cv-00637-RLH-GWF, which RLG filed  
23 on behalf of Liberty in June 2012.

24 42. In the Oron Litigation, RLG sought and obtained a substantial fee award on behalf  
25 of Liberty and against the defendant ("Oron").

26 43. In connection with RLG's moving papers for an award of fees, an RLG attorney  
27 represented through a sworn declaration that Liberty "incurred" the full hourly market rate fees  
28 sought by the motion.



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1           44. To the contrary, in accordance with its oral agreement with Liberty, RLG charged  
2 Liberty the reduced "at cost" rates of its employees, and not full hourly market rates.

3           45. In connection with RLG's moving papers for an award of fees, RLG also  
4 represented that it "charged" Liberty certain hourly rates.

5           46. To the contrary, at the time RLG filed its motion, RLG had not sent Liberty any  
6 invoices for work performed on the Oron Case.

7           47. In connection with its moving papers for an award of fees, RLG represented that  
8 RLG charged an hourly rate of \$500 for Randazza's services.

9           48. To the contrary, Randazza was a full time salaried employee of Excelsior who  
10 provided his services to Liberty in connection with his role as general counsel for Excelsior.

11           49. The Oron Case is currently on appeal to the Ninth Circuit Court of Appeals  
12 ("Ninth Circuit").

13           50. Oron has appealed numerous orders of the District Court, including the fee award.

14           51. While Liberty contends that the amount of the fee award is justified, it  
15 acknowledges that the award was made based upon misleading and incomplete facts that  
16 prevented the District Court from basing its ruling on a full and accurate record.

17           52. Once Liberty discovered that RLG failed to fully disclose the terms of both it and  
18 Randazza's employment to the Court, it was compelled to raise the issue with the Ninth Circuit.

19           53. Liberty filed a motion in the Ninth Circuit to ensure that all interested parties and  
20 tribunals are aware of the true circumstances surrounding the fee request ("Appellate Fee  
21 Motion").

22           54. The Appellate Fee Motion requests that the Ninth Circuit reassess and summarily  
23 affirm the amount of the fee award or, in the alternative, remand the issue to the District Court.

24           55. Liberty has incurred significant legal expenses to rectify RLG's lack of candor to  
25 the District Court regarding the nature of the relationship between Liberty, RLG and Randazza.  
26  
27  
28

**RLG'S Failure To Communicate With Liberty**

56. During the course of its representation, RLG failed to keep Liberty properly informed about the matters in which it was representing Liberty.

57. For example, RLG did not regularly invoice Liberty for its services, sometimes allowing months to pass without apprising Liberty of the precise work performed or amount due.

58. Additionally, RLG failed to obtain approval from Liberty for expenditures.

59. In fact, RLG did not seek or obtain prior approval before commencing work on the Oron Case.

60. Liberty initially believed that Randazza's work on the Oron Case was done in his role as general counsel for Excelsior.

61. When Liberty discovered that RLG had performed work in the Oron Case, Randazza, on behalf of RLG, informed Liberty that RLG had no expectation of receiving payment for its services unless and until a settlement was reached or judgment collected upon.

62. Also, after Liberty had approved a settlement agreement with Oron, RLG failed to inform Liberty that it had received a \$550,000 transfer of funds into its trust account for the settlement payment.

63. In fact, Liberty was unaware that Oron had transferred the settlement funds into RLG's trust account until, nearly a week after the transfer, Liberty's foreign counsel in Hong Kong—not RLG—informed Liberty that the transfer occurred.

64. RLG also failed to inform Liberty or obtain Liberty's consent regarding the substance of its arguments prior to some of its filings.

65. For example, while Liberty was generally aware that a motion for fees would be filed in the Oron Case, neither Randazza nor RLG circulated the motion to Liberty before or after it was filed.

66. Liberty was unaware that RLG made misrepresentations to the District Court in connection with the motion for fees for several weeks after the motion was filed.

**RLG's Acts Of Self-Dealing**

67. During the course of its representation, RLG engaged in several acts of self-dealing and attempted self-dealing, to the detriment of Liberty.

68. Liberty is informed and believes, and thereon alleges, that RLG did not begin doing business as "Randazza Legal Group" until well after Randazza began working for Excelsior, and after Randazza sought approval to begin pursuing matters in RLG's name.

69. Perhaps the most egregious act of attempted self-dealing by RLG occurred when Randazza, on behalf of RLG, negotiated a \$75,000 payment from Oron to RLG in the Oron Case.

70. When Liberty discovered this proposed payment to RLG, it confronted Randazza to ascertain why RLG would receive any settlement funds because any such payment would be to Liberty's detriment.

71. Randazza characterized this proposed payment as a "bribe" to prevent RLG from instituting other lawsuits against Oron.

72. Notably, Randazza also negotiated a loan by him to Liberty, supported by a promissory note, in connection with the Oron Case, after he convinced Liberty that it was necessary to retain foreign counsel in the case.

73. Also, in direct violation of his employment agreement, Randazza, on behalf of RLG, concurrently represented both Liberty and companies that Liberty discovered were infringing its copyrighted content, or that Liberty contracted or negotiated with to license Liberty's content.

74. RLG never disclosed to Liberty that it represented companies that may have directly adverse interests to Liberty, or that Liberty contracted with or considered contracting with.

75. Liberty is also informed and believes, and thereon alleges, that in connection with RLG's dealings with its other clients and Liberty's former employees, Randazza, on behalf of RLG, disclosed confidential business information to third parties in direct violation of the Randazza Agreement and Confidentiality Agreement.

76. Additionally, Randazza, on behalf of RLG and in direct contravention of the

1 Randazza Agreement, pursued substantial work outside of the work performed for Excelsior and  
2 Liberty.

3 77. In this regard, Randazza promoted himself and RLG in a manner designed to place  
4 RLG's interests above those of Liberty and Excelsior.

5 78. Also, Randazza, on behalf of RLG, pursued pro bono projects for which RLG  
6 received favorable media attention.

7 79. Instead of attributing the pro bono work to Liberty, as promised, RLG publicly  
8 took credit for it.

9 **RLG's Unauthorized Statements Without Liberty's Consent**

10 80. During the course of its representation, Randazza, on behalf of RLG, made several  
11 public statements regarding Liberty and the adult entertainment industry without consulting  
12 Liberty.

13 81. As RLG began filing the Torrent Suits, Liberty's customers and the public at large  
14 became concerned that certain defendants in the lawsuits would be put at a unique risk as a result  
15 of the suits due to the fact that Liberty's adult content is primarily purchased by the homosexual  
16 community.

17 82. Specifically, public concern arose that, as a result of the suits, gay teenagers whose  
18 parents were unaware of their sexual orientation might be involuntarily "outed" to their parents  
19 and the community by virtue of being served with legal process in public proceedings.

20 83. This concern was and is one that Liberty takes very seriously. Liberty desired to  
21 publicly address the issue to assure the community that it would in no way intentionally harm its  
22 consumers in that manner—even those who illegally traded its copyrighted content.

23 84. Contrary to Liberty's position on this issue, and without seeking or obtaining  
24 authorization from Liberty, Randazza, on behalf of RLG, made statements to members of the  
25 public regarding the risk that Liberty's suits presented to gay teenagers.

26 85. Specifically, Randazza publicly declared that "any thieving little shit who gets  
27 caught can very easily lie to his parents that he was looking at straight porn."

28 86. Randazza's unauthorized and inflammatory statement created a public relations

1 crisis for Liberty, which required Liberty to expend significant resources to assure the public that  
2 Randazza's statement did not reflect Liberty's position.

3 87. Notwithstanding Liberty's efforts to mitigate the damage caused by Randazza's  
4 statement, as a direct result of this statement Liberty suffered and continues to suffer damage to  
5 its reputation amongst its consumers and members of the gay community.

6 **Randazza Resigns From Excelsior And RLG Ceases Providing Services To Liberty**

7 88. By late August 2012, the relationship between Randazza and Liberty had seriously  
8 deteriorated.

9 89. In late August 2012, Randazza elected to resign from his position as general  
10 counsel for Excelsior.

11 90. After Randazza resigned, RLG ceased performing work on behalf of Liberty.

12 91. Liberty subsequently retained new counsel to handle its outstanding legal matters.

13 **RLG's Actions To Liberty's Detriment After Or Around The Time That It Ceases**  
14 **Providing Services To Liberty**

15 92. At or about the time when Randazza resigned from Excelsior as general counsel,  
16 Randazza, on behalf of RLG, removed Excelsior and Liberty's legal files from Excelsior's  
17 premises.

18 93. The files removed from Excelsior's premises were the property of Excelsior and  
19 Liberty, and not the property of RLG.

20 94. As a result of RLG's removal of Liberty's files, Liberty does not have access to its  
21 legal files.

22 95. RLG refuses to turn over Liberty's legal files.

23 96. Randazza, on behalf of RLG, also refuses to turn over the iPhone belonging to  
24 Excelsior that was issued to Randazza for company use, which contains Liberty's files and  
25 proprietary information.

26 97. Additionally, Randazza, on behalf of RLG, destroyed some of Liberty's files,  
27 including files maintained on the laptop belonging to Excelsior that was issued to Randazza for  
28 company use.

1 98. Moreover, RLG refuses to turn over funds to Liberty that are currently being held  
2 in RLG's trust account.

3 99. Approximately \$30,000 of the funds that RLG refuses to turn over to Liberty are  
4 not subject to any dispute between the parties or any third party.

5 **FIRST CLAIM FOR RELIEF**

6 **LEGAL MALPRACTICE**

7 100. Liberty repeats and re-alleges the allegations in Paragraphs 1 through 99, as if fully  
8 set forth herein.

9 101. RLG had a duty to use such skill, prudence and diligence as other members of the  
10 legal profession commonly possess and exercise.

11 102. RLG breached that duty by, among other things:

- 12 a. failing to apprise federal district court judges of the nature of its and
- 13 Randazza's relationship with Liberty and the parties' fee arrangement;
- 14 b. making misrepresentations to courts;
- 15 c. failing to apprise Liberty of the status of its cases;
- 16 d. failing to obtain approval for expenditures made on Liberty's behalf
- 17 e. taking actions that benefitted RLG to Liberty's detriment;
- 18 f. making statements to the public that directly contravened Liberty's
- 19 positions on the issues made in the statements; and
- 20 g. destroying and refusing to turn over Liberty's files and the undisputed
- 21 funds belonging to Liberty currently held in RLG's trust account.

22 103. RLG's negligent conduct proximately caused injury to Liberty.

23 104. Liberty suffered damage or actual loss resulting from RLG's negligence.

24 105. Among other injuries, Liberty has suffered direct pecuniary loss in the form of  
25 attorneys' fees to bring Randazza's lack of candor to the District Court to the Ninth Circuit's  
26 attention, and other costs to rectify RLG's acts of professional negligence enumerated herein.

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 NORTH CITY PARKWAY, SUITE 1600  
LAS VEGAS, NV 89106  
(702) 382-2101

1 WHEREFORE, Liberty prays for relief as follows:

- 2 1. for damages in an amount to be determined at trial, but in excess of \$10,000.00;
- 3 2. for attorneys' fees and costs of suit;
- 4 3. for prejudgment and post-judgment interest on the amounts owed; and
- 5 4. any further relief this Court deems proper.

6 Dated this 28th day of March, 2013.

7  
8 BROWNSTEIN HYATT FARBER SCHRECK, LLP

9  
10 By: /s/ Laura E. Bielinski  
11 Mitchell J. Langberg, Esq., Nevada Bar No. 10118  
12 Laura E. Bielinski, Esq., Nevada Bar No. 10516  
13 100 North City Parkway, Suite 1600  
14 Las Vegas, Nevada 89106  
15 mlangberg@bhfs.com  
16 lbielinski@bhfs.com  
17 Telephone: (702) 382-2101  
18 Facsimile: (702) 382-8135

19  
20  
21  
22  
23  
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25  
26  
27  
28  
*Attorneys for Defendants Liberty Media Holdings, LLC*

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 NORTH CITY PARKWAY, SUITE 1600  
LAS VEGAS, NV 89106  
(702) 382-2101

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that on this 28th day of March, 2013, I caused to be served a true and correct copy of the above foregoing **DEFENDANT LIBERTY MEDIA HOLDINGS, LLC'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIM** and via U.S. Mail, postage prepaid, and properly addressed to the following:

Clyde DeWitt, Esq.  
LAW OFFICES OF CLYDE DeWITT,  
APC  
6525 W. Warm Springs Road, Suite 100  
Las Vegas, NV 89118  
clydedewitt@earthlink.net  
*Attorneys for Plaintiff*

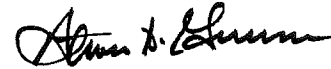
Ronald G. Green, Esq.  
J. Malcolm DeVoy, Esq.  
RANDAZZA LEGAL GROUP  
6525 W. Warm Springs Road, Suite 100  
Las Vegas, NV 89118  
ecf@randazza.com  
*Attorneys for Plaintiff*

/s/ Karen Mandall  
an employee of Brownstein Hyatt Farber Schreck, LLP



# **EXHIBIT 4**

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CLERK OF THE COURT

**SAO**

JOHN H. COTTON, ESQ.  
Nevada Bar No.: 5268  
E-mail: JHCotton@JHCottonlaw.com  
MELANIE BERNSTEIN CHAPMAN, ESQ.  
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JOHN H. COTTON & ASSOCIATES  
4900 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117  
Telephone: 702/832-5909  
Facsimile: 702/832-5910  
*Attorneys for Counterdefendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MARC J. RANDAZZA, P.A., a Florida  
professional association doing business as  
RANDAZZA LEGAL GROUP,

Plaintiff,

v.

LIBERTY MEDIA HOLDINGS, LLC, a  
California limited-liability company doing  
business as Corbin Fisher

Defendant.

Case No.: A-12-673275-C  
Dept. No.: VIII

**JOINT STIPULATION AND ORDER FOR  
DISMISSAL WITH PREJUDICE**

LIBERTY MEDIA HOLDINGS, LLC, a  
California limited-liability company doing  
business as Corbin Fisher,

Counterclaimant,

vs.

MARC J. RANDAZZA, P.A., a Florida  
professional association doing business as  
RANDAZZA LEGAL GROUP,

Counterdefendant.

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, MARC J.  
RANDAZZA P.A. d/b/a RANDAZZA LEGAL GROUP, by and through its attorney or record,  
Ronald Green, Esq. of the RANDAZZA LEGAL GROUP, Counterdefendant, MARC J.  
RANDAZZA, P.A. d/b/a RANDAZZA LEGAL GROUP, by and through its counsel of record,

*Randazza v. Liberty*  
Case No. A-12-673275-C  
Stipulation and Order for Dismissal

John H. Cotton, Esq., and Melanie Bernstein Chapman, Esq. of the law firm of JOHN H. COTTON & ASSOCIATES and Defendant/Counterclaimant, LIBERTY MEDICA HOLDINGS, LLC d/b/a CORBIN FISHER, by and through its counsel of record, Mitchell Langberg, Esq. of the law firm of BROWNSTEIN HYATT FARBER SCHRECK, LLP, that the above-entitled action be dismissed in its entirety, with prejudice, as to all parties, including all claims and counterclaims, each party to bear their own attorneys' fees and costs.

Dated this 28 day of July, 2016.

Dated this 27<sup>th</sup> day of July, 2016.

JOHN H. COTTON & ASSOCIATES, LTD.

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
NV Bar #12737

By: Melanie Bernstein Chapman

By: Mitchell J. Langberg

John H. Cotton, Esq.

Mitchell J. Langberg, Esq.

Nevada Bar No. 5268

Nevada Bar No. 10118

Melanie Bernstein Chapman, Esq.

100 North City Parkway, Suite 1600

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Las Vegas, Nevada 89106

7900 W. Sahara Ave., Suite 200

Las Vegas, Nevada 89117

*Attorneys for Liberty Media Holdings, LLC  
d/b/a Corbin Fisher*

*Attorneys for Counterdefendant, Marc J.*

*Randazza, P.A. d/b/a Randazza Legal Group*

Dated this \_\_\_\_ day of July, 2016

RANDAZZA LEGAL GROUP

By: \_\_\_\_\_

Ronald D. Green, Esq.

Nevada Bar No. 7360

6525 W. Warm Springs Road, Ste. 100

Las Vegas, NV 89118

*Attorneys for Plaintiff, Marc J. Randazza,*

*P.A. d/b/a Randazza Legal Group*

////

////

////

*Randazza v. Liberty*  
Case No. A-12-673275-C  
Stipulation and Order for Dismissal

John H. Cotton, Esq., and Melanie Bernstein Chapman, Esq. of the law firm of JOHN H. COTTON & ASSOCIATES and Defendant/Counterclaimant, LIBERTY MEDICA HOLDINGS, LLC d/b/a CORBIN FISHER, by and through its counsel of record, Mitchell Langberg, Esq. of the law firm of BROWNSTEIN HYATT FARBER SCHRECK, LLP, that the above-entitled action be dismissed in its entirety, with prejudice, as to all parties, including all claims and counterclaims, each party to bear their own attorneys' fees and costs.

Dated this \_\_\_\_ day of July, 2016.

Dated this \_\_\_\_ day of June, 2016.

JOHN H. COTTON & ASSOCIATES, LTD.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: \_\_\_\_\_

By: \_\_\_\_\_

John H. Cotton, Esq.  
Nevada Bar No. 5268  
Melanie Bernstein Chapman, Esq.  
Nevada Bar No. 6223  
7900 W. Sahara Ave., Suite 200  
Las Vegas, Nevada 89117  
*Attorneys for Counterdefendant, Marc J. Randazza, P.A. d/b/a Randazza Legal Group*

Mitchell J. Langberg, Esq.  
Nevada Bar No. 10118  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106

*Attorneys for Liberty Media Holdings, LLC  
d/b/a Corbin Fisher*

Dated this 25 day of July, 2016

RANDAZZA LEGAL GROUP

By: \_\_\_\_\_

Ronald D. Green, Esq.  
Nevada Bar No. 7360  
6525 W. Warm Springs Road, Ste. 100  
Las Vegas, NV 89118  
*Attorneys for Plaintiff, Marc J. Randazza, P.A. d/b/a Randazza Legal Group*

////

////

////

*Randazza v. Liberty*  
Case No. A-12-673275-C  
Stipulation and Order for Dismissal

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to the Stipulation of the parties, and good cause appearing, the above-entitled action shall be dismissed in its entirety, with prejudice, as to all parties, including all claims and counterclaims, each party to bear their own attorneys' fees and costs.

*[Signature]*  
DISTRICT COURT JUDGE *and*  
For DOUGLAS E. SMITH

Submitted by:  
JOHN H. COTTON & ASSOCIATES, LTD.  
By: *[Signature]*  
John H. Cotton, Esq.  
Nevada Bar No. 5268  
Melanie Bernstein Chapman, Esq.  
Nevada Bar No. 6223  
7900 W. Sahara Ave., Suite 200  
Las Vegas, Nevada 89117  
Attorneys for Counterdefendant  
Marc J. Randazza, P.A. d/b/a Randazza Legal Group

# **EXHIBIT 5**

**RPT**

Ryan A. Hamilton, Esq.  
Nevada Bar No. 11587  
Hamilton Law, LLC  
5125 S. Durango Dr., Ste. C  
Las Vegas, Nevada 89113  
(702) 818-1818  
(702) 974-1139  
ryan@hamiltonlawlasvegas.com

*Receiver for Righthaven, LLC*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RIGHTHAVEN LLC, a Nevada limited-  
liability company,

Plaintiff,

v.

WAYNE HOEHN, an individual,

Defendant.

Case No.: 2:11-cv-00050-PMP-RJJ

**RECEIVER'S REPORT**

**RECEIVER'S REPORT**

Ryan Hamilton, Receiver for Righthaven LLC, hereby files the following Report as to the status of Righthaven's Receivership

**I. Scope of the Receivership**

On November 14, 2011, Judgment Creditor Wayne Hoehn moved the Court for the installation of a receiver to marshal and sell Righthaven's intellectual property in partial satisfaction of his judgment and writ of execution against the company (ECF 62). The Court granted Hoehn's motion and appointed a Receiver (ECF 66).

At hearing on October 31, 2012, Hoehn argued that the Receivership was a general receivership that included the power to terminate Righthaven's appeal of the case to avoid potentially incurring further attorneys' fees to Hoehn. The Court rejected the proposition that the

1 Receiver had all the powers of a general Receivership. Instead the Court explained that it  
2 granted only the specific power Hoehn requested in his application for Receiver, *i.e.*, to marshal  
3 and sell Righthaven's intellectual property rights in attempt to satisfy Hoehn's judgment. The  
4 "Minutes of Proceedings" from the October 31 hearing provide, in relevant part, "[t]he Court  
5 clarifies the scope of the Receivership and confirms the Receivership was for the limited purpose  
6 to dispose of assets to satisfy the judgment, not to fire counsel handling the appeal and not to  
7 take any other action regarding Righthaven's appeal." (ECF 117).

8  
9 The Receiver has received inquiries from judgment creditors of Righthaven from other  
10 cases requesting to make claims on the property of the Receivership Estate. Based on the  
11 foregoing, however, the undersigned Receiver understands the powers and the purpose of this  
12 Receivership to be limited to disposing of Righthaven's intellectual property to satisfy only  
13 Hoehn's judgment, not the judgments of creditors in other cases. After all, were the Receiver to  
14 allow judgment creditors from other cases to make claims to the Receivership's Assets, that  
15 would frustrate the Receivership's "limited purpose" of satisfying Hoehn's judgment.<sup>1</sup>  
16 Likewise, the Receiver concludes that any distribution of the Receivership Estate to Stephen  
17 Gibson – CEO of the party that necessitated the Receivership in the first place – would defeat the  
18 purpose of the Receivership.  
19  
20

21 In the interest of forever terminating this litigation, Hoehn has agreed to accept the funds  
22 he and his counsel obtained from the Receiver in full satisfaction of his judgment. This benefits  
23 Righthaven as well, since Hoehn's judgment and claims for additional attorneys' fees will be  
24 resolved for less than their full value. Accordingly, the Receiver proposes a distribution of the  
25 Receivership property only to the judgment creditor in this case, Hoehn. Upon judicial approval  
26

---

27 <sup>1</sup> If the Receiver is mistaken and the Court declares that persons outside this litigation may make  
28 claims, the Receiver believes that the filing of a bankruptcy petition would be the best manner to  
resolve those competing claims to the Receivership Estate.



1 of the Receivership's distribution, Hoehn and the Receiver have arranged to resolve all claims  
2 and bring this case to an end.

## 3 II. Proposed Distribution of Funds

4 Presently, the Righthaven Receivership Estate consists of \$85,000. \$80,000 of this was  
5 obtained from a private sale of Righthaven's rights back to Stephens Media LLC, the creators of  
6 the works underlying many of Righthaven's more than 275 lawsuits. While this was not  
7 obtained at auction, prior auctions for Righthaven's rights failed, largely due to their indefinite  
8 nature. After searching for buyers in the face of the auction's failure, Righthaven's rights  
9 acquired from Stephens Media were sold back to their original source in a commercially  
10 reasonable manner, as no other market existed for them. As the Receiver in this limited  
11 receivership, I am satisfied that no other method of sale could have brought a higher price.

12 Below is the proposed distribution of the Receivership Estate.

### 13 a. Administrative Expense Claims

14 Administrative expense claims receive the ultimate priority over all other claims. *See*  
15 *Fla. Dep't of Ins. v. Chase Bank of Tex. N.A.*, 274 F.3d 924, 932 (5th Cir. 2001) (providing for  
16 "payment of administrative claims first"); *Battista v. FDIC*, 195 F.3d 1113, 1119 (9th Cir. 2000)  
17 ("the receiver's administrative expenses are paid ahead of all other claims"); *SEC v. Byers*, 637 F.  
18 Supp. 2d 166 (S.D.N.Y. 2009) (approving of liquidation/distribution plan proposed by receiver  
19 where administrative expenses are paid first); *In re Buttonwood Secur., Inc.*, 349 F. Supp. 273  
20 (S.D. Cal. 1972) (holding that expenses incurred by receiver in liquidating estate are first-priority  
21 administrative expenses). Thus, receivership expenses reasonably incurred in the administration  
22 of the Receivership Estate are paid first.

23 I presided over the addition of \$80,000 to the Righthaven receivership estate. I claim as  
24 an administrative expense fee 10% of the property I marshaled for the Receivership Estate, or  
25 \$8,000. I submit that this expense is reasonable in light of the services I provided, and is in  
26 keeping with the typical administrative expense of one marshaling and administering the assets  
27 of a Receivership or Bankruptcy Estate.

28 The prior Receiver, Lara Pearson, performed approximately \$36,000 worth of services  
for the Receivership Estate in marshaling approximately \$9,000 in assets into the estate.

1 Because her term as Receiver concluded before the end of the Receivership, she has sought 10%  
2 of the \$36,000 in services she provided, or \$3,600, as compensation. This is a reasonable in light  
3 of the services she provided.

4 Finally, Randazza Legal Group ("RLG") has made a claim for administrative expenses  
5 billed to the Receiver in the installation of the Receiver, marshaling of assets into the  
6 Receivership estate, services in obtaining buyers for estate assets, and preserving the estate in the  
7 face of litigation by third parties. These actions, undertaken for the Receiver's and Receivership  
8 Estate's benefit, are administrative expenses entitled to first priority repayment. The priority and  
9 sufficiency of RLG's claim is evaluated by the Receiver. *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d  
10 1107, 1113 (9th Cir. 1999); *SEC v. American Capital Invs., Inc.*, 98 F.3d 1133, 1146 (9th Cir.  
11 1996); *SEC v. Wencke*, 783 F.2d 829, 836 (9th Cir. 1986); *SEC v. Universal Fin.*, 760 F.2d 1034,  
12 1037 (9th Cir. 1985).

13 RLG seeks \$55,000 in expenses for the reasonable market value of its administrative  
14 expenses undertaken for the benefit of the receivership estate. This Court (Doc. # 43), the  
15 District of Colorado in *Righthaven LLC v. Wolf*, Case No. 1:11-cv-00830 (D. Colo.) and the  
16 *Righthaven LLC v. Leon* court, Case No. 2:10-cv-01367 Doc. # 52, have all found that the  
17 defendants represented by RLG were entitled to recover the full reasonable market value of their  
18 attorneys' fees, indicating that the fees charged by RLG were reasonable. Consistent with the  
19 findings of this District and the District of Colorado in these Righthaven cases, the Receiver  
20 approves RLG's administrative expense claim for \$55,000.00.

#### 21 **b. Judgment Creditor Claims**

22 Wayne Hoehn holds a judgment for \$34,045.50 that has been registered with Clark  
23 County and the Nevada Secretary of State. Additionally, Hoehn holds approximately \$100,000  
24 in additional reasonable attorneys' fees that he has incurred during the course of this litigation.  
25 This claim is not secured, but Hoehn contends it is properly taxed to Righthaven.

26 Hoehn has already received approximately \$2,500 from the Receivership Estate  
27 following the sale of <righthaven.com>. After administrative expenses, all that remains is  
28 \$18,400. Although this is less than what Hoehn is owed under his judgment, he has agreed with  
the Receiver that if this sale is approved and the proposed disbursement authorized, his judgment  
will be satisfied in full and he will release the Receivership Estate from any further claims. This

1 represents a benefit to Hoehn, and also removes a source of potential liability for Righthaven.  
2 Indeed, this would allow Righthaven not only to satisfy a judgment pending against it, but also a  
3 potential civil claim for Hoehn's fees.

4 It is my opinion that the proposed distribution is equitable, proper, and in the interests of  
5 judicial economy. Moreover, the proposed distribution will bring finality to this litigation.<sup>2</sup>

### 6 7 **III. Conclusion**

8 The Receiver finds that it is in the interests of the parties for the Court to approve the  
9 Receiver's sale of Righthaven's rights acquired from Stephens Media LLC back to Stephens  
10 Media LLC for \$80,000. Consistent with this Court's prior Orders, this sum is to be divided  
11 between the Receiver, the administrative expenses he has incurred and approved, and Mr.  
12 Hoehn's remaining judgment. If this sale and distribution of funds is approved, Hoehn has  
13 agreed to waive any claim for his remaining judgment and unsecured claims against Righthaven,  
14 and the Receivership may be terminated.

15 I propose the funds be disbursed as follows:

16 \$ 8,000 to Ryan A. Hamilton as Receiver;

17 \$ 3,600 to Lara Pearson for the administrative expense of her prior service as Receiver;

18 \$ 55,000 to Randazza Legal Group for its administrative expenses in this matter; and

19 \$18,400 to Wayne Hoehn, judgment creditor.

20 Respectfully submitted,

21  
22 DATED March 15, 2013

23 /s/ Ryan A. Hamilton

24 *Receiver for Righthaven LLC*

25  
26  
27  
28 <sup>2</sup> Hoehn has indicated that he reserves the right to re-open this matter if the above disbursements are not approved, as he believes this proposal to be in his interest.

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I caused the foregoing to be served by first class U.S. Mail and the Court's CM/ECF system on the following:

Michael R. Mushkin  
MICHAEL R. MUSHKIN & ASSOCIATES  
4475 South Pecos Road  
Las Vegas, NV 89121

Marc J. Randazza  
James M. DeVoy, IV  
RANDAZZA LEGAL GROUP  
6525 W. Warm Springs Road, Ste. 100  
Las Vegas, NV 89118

/s/Ryan A. Hamilton

## **EXHIBIT 6**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

RIGHTHAVEN, LLC,

Plaintiff,

v.

WAYNE HOEHN,

Defendant.

2:11-CV-00050-PMP-RJJ

ORDER

Having read and considered the Receiver's March 15, 2013 Report (Doc. #120) and the Receiver's proposed distribution of the Receivership's assets, and having received no opposition thereto, the Court finds that the Receiver's proposed distributions are appropriate and consistent with the Receivership's purpose. Accordingly, the Court hereby APPROVES the Receiver's distribution of assets as set forth in the March 15, 2013 Report.

IT IS THEREFORE ORDERED the Receiver is authorized, and shall make, the following distributions within ten days of this Order:

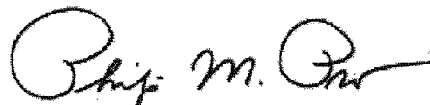
\$8,000 to Ryan A. Hamilton as Receiver;

\$3,600 to Lara Pearson for the administrative expense of her prior service as Receiver;

\$55,000 to Randazza Legal Group for its administrative expenses in this matter; and

\$18,400 to Wayne Hoehn, Judgment Creditor.

DATED: June 6, 2013



PHILIP M. PRO  
United States District Judge

# **EXHIBIT 7**

SETTLEMENT AGREEMENT

THIS AGREEMENT is made between, on the one hand, FF Magnat Limited, a Hong Kong corporation with its principle place of business at Hong Kong (hereinafter, referred to as, "Oron"), and on the other hand, Liberty Media Holdings, LLC u/k/a Corbin Fisher with a principal place of business at 4262 Blue Diamond Rd., Suite 102-377, Las Vegas, NV 89141 (hereinafter collectively referred to as "Liberty").

WHEREAS, Liberty has alleged copyright infringement against Oron;

WHEREAS, Oron denies such copyright infringement;

WHEREAS, Liberty has filed litigation in the Federal District Court for the District of Nevada in the United States, Docket No.2:12-cv-01057-GMN-RJJ (the "Nevada Lawsuit");

WHEREAS, Liberty has filed litigation in Hong Kong (including obtaining an injunction), case # HCPM 1275 /2012 (the "Hong Kong Lawsuit");

WHEREAS, the Court in Nevada ruled in favor of Liberty on certain issues of the Nevada Lawsuit and Oron plans to appeal said rulings;

WHEREAS, the parties wish to settle their disputes without further litigation.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. MONETARY TERMS (ALL AMOUNTS IN US DOLLARS) AND JOINT OBLIGATIONS

1. Oron shall pay Liberty six hundred thousand dollars (\$600,000.00) (the "Settlement Funds"). The Settlement Funds will be paid as follows: the parties will stipulate that \$600,000 US Dollars of the frozen funds in Oron's PayPal account will be transferred as soon as possible to the Randazza Legal Group's client trust account to be held in trust and released only in strict accordance with the terms hereof (the "Escrowed Funds"). In addition, \$75,000 of Oron's PayPal funds will be transferred immediately to the client trust account of Boston Law Group, PC. Randazza Legal Group shall not disburse the Escrowed Funds to Liberty until the occurrence of all of the following conditions (the completion of (a), (b), (c) and (d) below shall be referenced herein as the "Dispersal Contingency"):

- a. this settlement becomes final, including the exchange of signed copies of the agreement;
- b. Liberty complies with the terms set forth in all sections in Article II (LIBERTY'S

WHO GETS THIS?

DEFENDANT'S  
EXHIBIT  
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## NON-MONETARY OBLIGATIONS) hereof;

- c. all of Oron's funds, worldwide (including without limitation in the US and in Hong Kong as well as the accounts set forth in Attachment A herein, collectively the "Oron Accounts") are no longer frozen and have all been dispersed to a bank account of Oron's designation (it being understood and agreed that Oron may, at its sole discretion, direct some of these funds to be transferred to its bank account in Hong Kong and then from that account to another account of its designation);
- d. no new lawsuits, motions or injunctions are filed against Oron before subsections (a) through (c) above are fulfilled in their entirety; and
- e. the Parties agree that any delay to disbarment under paragraph 1(c) or other lawsuits under paragraph 1(d) that are filed completely independently of Liberty or Randazza Legal Group's involvement shall not affect this Agreement. For example, Playworks has filed a case against Oron in Illinois, and neither Liberty nor Randazza Legal Group have any involvement in that case, and nothing that happens with regards to that case shall affect this agreement.

Upon the completion of the Dispersal Contingency in its entirety, the Escrowed Funds shall become the property of Liberty and Randazza Legal Group shall pay the Settlement Funds to Liberty.

If Randazza Legal Group transfers any of the Escrowed Funds to anyone at all before the Dispersal Contingency is complete in its entirety (other than pursuant to a court order or a written agreement of Oron and Liberty) Randazza Legal Group and Attorney Marc Randazza shall be jointly and severally personally liable to Oron for the Escrowed Funds plus a 10% liquidated damages fee. If Oron unreasonably delays the transfer of funds, or more than fourteen (14) days passes, without all contingencies occurring, then the \$600,000 shall become Liberty's property immediately, and no further delay in disbursement shall occur.

2. Each party shall cooperate with the other, use best efforts, file all such motions, and take all such actions as are necessary in order to release all funds in all Oron Accounts and enable Oron to transfer all funds from all Oron Accounts to a bank account of Oron's designation and to ensure the occurrence of all other provisions of the Dispersal Contingency.
3. Upon receipt of the Escrowed Funds by Randazza Legal Group, the parties shall file a joint motion under seal with the Nevada Court requesting all remaining money in the Paypal account be wired to an account of Oron's designation and requesting that the court order all other Oron funds to be released in accordance with Oron's wishes (it being understood and agreed that Oron shall first direct these funds to be delivered to its account in Hong Kong and then from that account to another account of its choosing -- Oron shall not be required to disclose the details of its final target bank account to Liberty or to any other party).

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Deleted: [REDACTED]  
Deleted: In the event that despite Oron's reasonable efforts, the Dispersal Contingency does not occur within thirty (30) days from the date hereof, Randazza Legal Group shall return the Escrowed Funds to Oron upon Oron's written request.  
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## II. LIBERTY'S NON-MONETARY OBLIGATIONS

4. Liberty warrants and affirms that it shall not act on the Execution obtained in the Nevada Lawsuit at any time after the date hereof;
5. Upon the occurrence of the Dispersal Contingency, Liberty shall, within 24 hours, report the Execution as satisfied in full to the Nevada Court.
6. Upon receipt of the Escrowed Funds by Randazza Legal Group as indicated above, Liberty shall dismiss the Hong Kong Lawsuit within 48 hours (including lifting the injunction), with prejudice, against all Defendants to the action and without claiming any legal fees or any other amounts. Liberty will also affirmatively report to the Hong Kong court that it is not seeking any legal fees from Oron.
7. Upon receipt of the Escrowed Funds by Randazza Legal Group as indicated above, the Nevada Lawsuit will be dismissed against Maxim Bochenko aka Roman Romanov within 24 hours, with prejudice and all motions (including without limitation Liberty's Motion for Legal Fees) shall be withdrawn. However, this shall only occur if Maxim Bochenko signs this agreement and agrees to be bound by all of its terms.
8. Liberty agrees to privately arbitrate any future disputes with the parties to this Agreement and/or to the parties to the Nevada Lawsuit and/or the parties to the Hong Kong Lawsuit, based on facts that occur after the date of this agreement. If there is arbitration, no in-person hearings for the parties shall be required, but they shall be permitted. The parties agree that the Arbitrators shall have injunctive powers equivalent with that of a Federal Judge including, but not limited to the power to grant equitable relief. Any party may attend arbitration telephonically if they wish, and/or arbitration is not required to take place in the United States. For example, the parties may arbitrate through WIPO or ICC in Stockholm, or any other arbitration forum to which the parties may mutually agree. If the Parties cannot agree on a arbitral forum, then the aggrieved party may bring a central claim in Las Vegas, Nevada.
9. Liberty will actively dissuade others from bringing suit against Oron and the parties to the Nevada and Hong Kong lawsuits.
10. Liberty will actively assist Oron in sending letters written by Oron, and doing everything else necessary, to convince Paypal and other payment processors to allow Oron to accept payments through their service. No dishonest statements will be required. In the event that Liberty cannot, in good faith, make a helpful statement (due to a belief that it would require a dishonest statement), then Liberty agrees to make no comment whatsoever. The content of the letter is attached as Exhibit B.
11. Liberty shall announce publically that, after a careful review of the facts, they believe Oron is protected by the DMCA safe harbor and that neither it nor its agents ever physically viewed or downloaded child pornography from the site.

WILL  
HE  
SIGN?

Paralegal: Wanda 8/9/16 2:40 PM  
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Paralegal: Wanda 8/9/16 11:25 AM  
Deleted: that it has not to date acted on the Execution obtained in the Nevada Lawsuit and warrants and affirms

Paralegal: Wanda 8/9/16 12:40 PM  
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Paralegal: Wanda 8/9/16 12:40 PM  
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Paralegal: Wanda 8/9/16 12:40 PM  
Deleted: Attorney Randazza and

Paralegal: Wanda 8/9/16 12:40 PM  
Deleted: Attorney Randazza and

Paralegal: Wanda 8/9/16 12:40 PM  
Deleted: and to send letters to every company and or entity to whom Liberty or Randazza sent letters pertaining to this matter

Paralegal: Wanda 8/9/16 12:40 PM  
Deleted: a review of the actual files shows that there never was any child porn on Oron's site

Paralegal: Wanda 8/9/16 12:40 PM  
Commented: I have reviewed the files and the files are owned by Oron.

12. The parties will craft a joint letter for publications stating that the parties are joining together in the fight against child porn and copyright infringement. This letter will include a statement that Oron is modifying its business practices, with Liberty's help, to embark on a campaign to run a profitable cyber locker without piracy. The content of the letter is attached as Exhibit C.

← Harm.

### III. ORON'S NON-MONETARY OBLIGATIONS:

13. Within 24 hours of the Settlement Contingency, the filing of the Execution as Satisfied and the Dismissal of the Hong Kong and Nevada Lawsuits along with all pending motions, Oron shall withdraw any Notice of Appeal in the Nevada Lawsuit, and will waive any motions, appeals, claims, or any other process that it may have, known or unknown, as will Bochenko.
14. Oron will take both strong and bold measures to keep Liberty Media content off of its servers, and Bochenko will do the same with regards to his websites and businesses.
15. Oron will assist Liberty in the identification and civil prosecution of any parties who have been using Oron to distribute Liberty's copyrighted material, including but not limited to, full disclosure of IP addresses, banking information, emails and any other information that may assist in Liberty in such prosecution (Client Identification). This will not include Oron paying any legal costs for such prosecution however; it may require Oron to sign statements authenticating the information. Liberty shall keep confidential the fact that Oron is providing Client Identification and if such information must be used in a court case then shall both provide a subpoena to Oron for each piece of such information, shall endeavor to only use such information under seal and if such information must be filed publicly shall provide Oron with reasonable notice of this fact. The subpoena requirement may be met with a DMCA subpoena, or a state court subpoena issued in a bill of pre-discovery, or other similar pre-suit subpoena procedure, and Oron agrees that it will not contest the validity of any such subpoena, or its applicability to Oron.
16. Liberty will have unfettered access to takedown / delete any of Liberty's material that are being distributed through Oron.com, through Oron.com's online access so long as Liberty reasonably believes the content is infringing content owned by Liberty. Liberty may delegate this function to a third-party takedown services (3P). Liberty acknowledges that any such takedowns will automatically include an email notice to the account holder's email telling them that the material has been taken down through the auspices of a DMCA takedown notice filed by Liberty, providing a copy of the DMCA takedown notice including Liberty's contact information. If the takedown is done through a 3P then said 3P must follow the same terms as if they were Liberty.
17. Any payment due to anyone who has been distributing Liberty materials will be frozen, and an accounting thereof will be provided to Liberty. Oron agrees to hold such funds in escrow and to pay them to Liberty if Liberty secures a judgment or settlement from these parties.

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18. Oron will permanently ban, by email address, PayPal account, IP address or any other reasonable and robust metric, any user who is the subject of even a single Liberty Media takedown notice. Any user account that has a takedown by Liberty will automatically be banned by these terms. Liberty agrees not to abuse this unfettered access.

#### IV. GENERAL TERMS, ...

19. By Liberty. Upon receipt by Liberty of the Settlement Payment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Liberty releases and forever discharges Oron, Maxim Bochenko a/k/a Roman Romanov, and each of their past and present subsidiaries, parent corporations, and each of their respective officers, directors, shareholders, attorneys, agents, employees, contractors, and assigns (collectively, the "Oron Releasees") from any and all debts, claims, demands, actions, causes of action, controversies, attorney's fees, omissions, damages, and liabilities of every description, at law or in equity, whether known or unknown, that Liberty had, now has, or may have against the Oron Releasees, including, without implied limitation, all claims which were raised or could have been raised in the Nevada Lawsuit or the Hong Kong Lawsuit. For that reason, Liberty hereby waives any and all rights or benefits, which it may have under the terms of any applicable statute or case law.

20. By Oron. Upon receipt by Liberty of the Settlement Payment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Oron and all of its directors, employees, and agents, releases and forever discharges Liberty, and each of its past and present subsidiaries, parent corporations, and each of their respective officers, directors, shareholders, attorneys, agents, employees, contractors, and assigns (collectively, the "Liberty Releasees") from any and all debts, claims, demands, actions, causes of action, controversies, attorney's fees, omissions, damages, and liabilities of every description, at law or in equity, whether known or unknown, that Oron had, now has, or may have against the Liberty Releasees, including, without implied limitation, all claims which were raised or could have been raised in the Nevada Lawsuit or the Hong Kong Lawsuit. For that reason, Oron hereby waives any and all rights or benefits, which it may have under the terms of any applicable statute or case law.

21. By Bochenko. Upon receipt by Liberty of the Settlement Payment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bochenko releases and forever discharges Liberty, and each of its past and present subsidiaries, parent corporations, and each of their respective officers, directors, shareholders, attorneys, agents, employees, contractors, and assigns (collectively, the "Liberty Releasees") from any and all debts, claims, demands, actions, causes of action, controversies, attorney's fees, omissions, damages, and liabilities of every description, at law or in equity, whether known or unknown, that Bochenko had, now has, or may have against the Liberty Releasees, including, without implied limitation, all claims which were raised or could have been raised in the Nevada Lawsuit or the Hong Kong Lawsuit. For that reason, Bochenko hereby waives any and all rights or benefits, which it may

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have under the terms of any applicable statute or case law.

#### V. GENERAL TERMS

22. The terms of this Agreement shall be confidential and shall not be disclosed to any third party, except (a) Oron may disclose the terms of this Agreement relating to withdrawing lawsuits and releasing funds (Sections 2, 3, 4, 6 and 7) and (b) as required by law, court, or government agency regulation and in such event under a suitable protective order protecting this agreement from disclosure to the extent available in accordance with the laws of the pertinent country. Both parties shall take reasonable measures to maintain the confidentiality of the terms of this Agreement. Oron may indicate publicly that it is implementing new anti-piracy measures (to Oron's benefit in order to dissuade other suits). Liberty may announce that it is instructing and assisting Oron with such measures.

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23. Arbitration of all disputes arising after date of this Agreement. All arbitrations may be done telephonically by one or both parties. This Agreement shall be governed by the laws of Nevada without respect to the local conflict of laws provisions thereof. Nevada Law applies to future arbitration disputes, but both parties stipulate that this is not a "contact" with the United States and although Nevada law applies to the agreement, nothing herein shall be deemed to bring Oron into the US for purposes of Jurisdiction or otherwise. Nevertheless, any arbitral award may be enforced in Nevada, and the Parties stipulate that the Courts in Nevada shall have jurisdiction over them for the sole purpose of the enforcement of arbitral awards.

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24. This Agreement shall be binding upon the parties hereto, their successors or assigns, and upon any and all others acting by or through them or in privity with them, or under their direction.

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25. No representation or warranties have been made by either party to the other, or by anyone else, except as expressly set forth in this Agreement, and this Agreement is not being executed in reliance on any representation or warranty other than those expressly set forth herein.

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26. In the event that any provision of this Agreement or the application of any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect, and this Agreement shall be interpreted as if such invalid provisions were omitted.

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27. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations or agreements, whether written or oral, relating to such subject matter (specifically including the alleged agreement enforced by the Nevada Court). This Agreement may not be altered, amended, modified or otherwise changed except by an instrument in writing duly executed by authorized representatives of each of the parties hereto.

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28. In the event that any party must take legal or arbitral action to enforce the terms of this

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Agreement, the prevailing party shall be entitled to its legal costs and expenses (including reasonable attorneys' fees) in addition to any other damages

29. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together should constitute one and the same agreement.

30. In the event that Maxim Bochenko does not sign this Agreement, then he receives no benefits hereunder, and Liberty shall be free to bring any claims whatsoever against Bochenko in any forum. However, if Bochenko does sign, then he shall be bound by any terms that also bound Oron.

IN WITNESS OF their understanding and agreement, the parties have executed this Agreement by signature of a duly authorized officer on the date set forth below.

**ACCEPTED AND AGREED TO:**

FF Magnat Limited

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Liberty Media Holdings, LLC

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Maxim Bochenko a.k.a Roman Romanov

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Randazza Legal Group and Attorney Marc Randazza personally  
(with respect to the trust obligations in Section 1 only)

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Marc Randazza, Esq.

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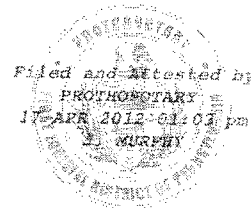


**Attachment A**  
**Oron Accounts**

1. PayPal ([paypal.com](http://paypal.com))
2. PaymentWall (<http://www.paymentwall.com/>)
3. MicroPayment (<https://www.micropayment.ch/>)
4. CCBill (<http://www.ccbill.com/>) may have a negative balance even but I guess that doesn't really matter.
5. Payza, ex AlertPay (<https://www.payza.com/>)
6. PaySpace ([payspace.lv](http://payspace.lv))
7. AcquirePay (<http://acquirepay.com/>)
8. DaoPay (<http://www.daopay.com/>)
9. HSBC Hong Kong Bank

# **EXHIBIT 8**





**Mulvihill & Rushie LLC**

By: A. Jordan Rushie

Pa Id. 209066

2424 East York Street • Suite 316

Philadelphia, PA 19125

215.385.5291

ATTORNEYS FOR PLAINTIFF

**In the Court of Common Pleas  
First Judicial District of Pennsylvania**

Liberty Media Holdings LLC, <i>Plaintiff,</i>	Jury Trial Demanded
v.	Term 2012
John Does I-265, <i>Defendants.</i>	No.

**Praecipe to Issue Writ of Summons.**

To the Prothonotary:

Please issue a Writ of Summons in the above-captioned action.

Respectfully Submitted,

A. Jordan Rushie

**Mulvihill & Rushie LLC**

2424 East York Street • Suite 316

Philadelphia, PA 19125

ATTORNEYS FOR PLAINTIFF

C.P.97

Commonwealth of Pennsylvania  
CITY AND COUNTY OF PHILADELPHIA

SUMMONS  
CITACION

Liberty Media Holdings LLC

COURT OF COMMON PLEAS

Term, 20<sup>12</sup>

No. \_\_\_\_\_

vs.

John Does 1-441, Identified by IP addresses in  
attached Exhibit A.

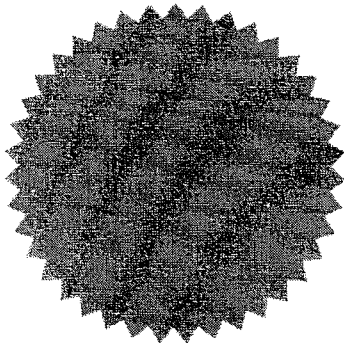
To<sup>(1)</sup>

John Does 1-441, Identified by IP  
addresses in attached Exhibit A.

You are notified that the Plaintiff<sup>(2)</sup>  
*Usted esta avisado que el demandante<sup>(2)</sup>*

Liberty Media Holdings LLC

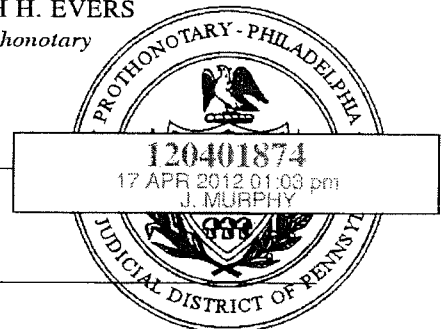
Has (have) commenced an action against you.  
*Ha (han) iniciado una accion en contra suya.*



JOSEPH H. EVERS  
*Prothonotary*

By \_\_\_\_\_

Date \_\_\_\_\_



<sup>(1)</sup> Name(s) of Defendant(s)

<sup>(2)</sup> Name(s) of Plaintiff(s)

COURT OF COMMON PLEAS

\_\_\_\_\_Term, 20 12 No. \_\_\_\_\_

Liberty Media Holdings LLC

vs.

John Does 1-441, Identified by IP addresses  
in attached Exhibit A.

SUMMONS

## Exhibit A

Host IP address	Hit Date(UTC)	ISP
24.62.3.50	2011-10-31 04:35 AM	Comcast Cable
24.18.233.139	2011-10-31 07:31 PM	Comcast Cable
69.244.148.138	2011-11-01 06:46 PM	Comcast Cable
24.16.231.107	2011-11-02 08:40 AM	Comcast Cable
71.59.189.44	2011-11-02 10:04 AM	Comcast Cable
24.19.26.176	2011-11-02 05:55 PM	Comcast Cable
71.56.119.154	2011-11-02 05:32 AM	Comcast Cable
69.251.253.65	2011-11-03 12:26 AM	Comcast Cable
98.210.11.89	2011-11-03 02:33 AM	Comcast Cable
71.201.49.214	2011-11-03 09:27 PM	Comcast Cable
71.58.0.93	2011-11-04 12:31 PM	Comcast Cable
67.182.244.250	2011-11-05 05:06 AM	Comcast Cable
174.52.169.57	2011-11-07 03:49 PM	Comcast Cable
76.24.192.192	2011-11-07 03:53 PM	Comcast Cable
24.21.97.202	2011-11-07 08:41 AM	Comcast Cable
24.1.115.213	2011-11-07 04:06 AM	Comcast Cable
69.251.199.118	2011-11-07 04:51 AM	Comcast Cable
76.26.132.11	2011-11-07 05:09 AM	Comcast Cable
71.199.13.228	2011-11-08 08:06 AM	Comcast Cable
68.84.78.225	2011-11-08 01:10 PM	Comcast Cable
76.103.142.134	2011-11-08 05:04 PM	Comcast Cable
107.5.95.184	2011-11-08 12:55 AM	Comcast Cable
75.70.13.20	2011-11-08 12:00 AM	Comcast Cable
174.55.130.68	2011-11-08 09:39 PM	Comcast Cable
24.131.79.45	2011-11-09 04:49 AM	Comcast Cable
76.16.51.24	2011-11-09 06:25 AM	Comcast Cable
24.118.194.183	2011-11-12 11:02 PM	Comcast Cable
71.62.92.42	2011-11-12 01:57 PM	Comcast Cable
71.227.219.246	2011-11-12 04:32 AM	Comcast Cable
66.30.12.248	2011-11-13 01:03 AM	Comcast Cable
24.10.169.119	2011-11-13 02:09 AM	Comcast Cable
69.137.171.142	2011-10-30 02:11 AM	Comcast Cable
69.244.148.138	2011-10-30 12:40 AM	Comcast Cable
71.237.113.17	2011-10-31 06:26 AM	Comcast Cable
98.222.80.187	2011-10-31 02:46 PM	Comcast Cable
71.58.0.93	2011-10-31 10:20 AM	Comcast Cable
71.194.213.72	2011-11-01 03:36 AM	Comcast Cable
98.218.232.81	2011-11-01 02:17 AM	Comcast Cable
98.203.25.88	2011-11-01 12:00 AM	Comcast Cable
67.162.85.172	2011-11-02 07:29 AM	Comcast Cable
98.217.0.171	2011-11-02 04:06 PM	Comcast Cable

98.197.160.137	2011-11-03 08:19 AM	Comcast Cable
24.98.225.151	2011-11-03 03:18 PM	Comcast Cable
98.213.83.250	2011-11-04 04:25 AM	Comcast Cable
68.58.67.157	2011-11-05 02:43 AM	Comcast Cable
24.20.246.60	2011-11-05 02:48 AM	Comcast Cable
66.41.166.206	2011-11-05 03:50 PM	Comcast Cable
69.181.145.123	2011-11-05 05:24 AM	Comcast Cable
24.21.97.202	2011-11-10 06:30 PM	Comcast Cable
67.185.16.112	2011-11-11 10:45 AM	Comcast Cable
24.118.48.147	2011-11-12 02:51 AM	Comcast Cable
68.83.249.180	2011-11-12 05:26 AM	Comcast Cable
71.197.234.229	2011-11-12 06:05 PM	Comcast Cable
69.136.190.7	2011-11-12 06:05 AM	Comcast Cable
98.232.14.246	2011-11-13 09:45 AM	Comcast Cable
76.23.122.74	2011-11-13 02:10 AM	Comcast Cable
71.59.189.44	2011-11-14 09:24 AM	Comcast Cable
76.124.111.133	2011-11-14 10:13 PM	Comcast Cable
76.114.202.41	2011-11-14 12:09 PM	Comcast Cable
98.193.16.225	2011-11-15 11:32 AM	Comcast Cable
174.51.103.237	2011-11-15 04:40 AM	Comcast Cable
24.19.150.235	2011-11-15 03:11 AM	Comcast Cable
76.26.174.168	2011-11-16 12:07 AM	Comcast Cable
71.229.112.220	2011-11-16 02:44 AM	Comcast Cable
68.83.168.63	2011-11-16 02:18 AM	Comcast Cable
98.246.145.246	2011-11-16 03:32 AM	Comcast Cable
98.214.150.240	2011-11-16 01:07 PM	Comcast Cable
69.246.25.236	2011-11-16 11:23 AM	Comcast Cable
24.61.15.202	2011-11-17 01:08 AM	Comcast Cable
98.212.194.179	2011-11-17 04:18 AM	Comcast Cable
24.131.19.11	2011-11-17 02:16 AM	Comcast Cable
98.202.105.55	2011-11-18 03:53 AM	Comcast Cable
71.201.49.214	2011-11-18 01:05 AM	Comcast Cable
71.204.160.210	2011-11-18 04:04 AM	Comcast Cable
76.120.15.74	2011-11-18 12:07 AM	Comcast Cable
98.193.89.164	2011-11-19 12:00 AM	Comcast Cable
69.181.40.65	2011-11-21 01:44 AM	Comcast Cable
71.236.21.16	2011-11-29 06:26 PM	Comcast Cable
98.227.104.229	2011-11-29 06:24 PM	Comcast Cable
75.73.75.146	2011-11-29 06:20 PM	Comcast Cable
107.3.149.198	2011-11-29 06:29 PM	Comcast Cable
76.119.110.227	2011-11-29 10:18 PM	Comcast Cable
68.42.125.39	2011-11-29 08:51 PM	Comcast Cable

76.100.69.136	2011-11-29 06:32 PM	Comcast Cable
98.196.56.230	2011-11-30 12:00 AM	Comcast Cable
67.175.200.198	2011-12-05 05:28 PM	Comcast Cable
71.232.91.50	2011-12-05 05:19 PM	Comcast Cable
68.50.143.223	2011-12-06 01:17 AM	Comcast Cable
98.206.151.1	2011-12-06 01:45 AM	Comcast Cable
75.65.135.31	2011-12-06 11:45 AM	Comcast Cable
98.248.228.128	2011-12-06 11:44 AM	Comcast Cable
98.252.65.121	2011-12-06 04:57 AM	Comcast Cable
67.160.219.73	2011-11-29 06:00 PM	Comcast Cable
98.196.56.230	2011-11-29 02:52 PM	Comcast Cable
69.143.106.222	2011-11-29 05:23 PM	Comcast Cable
67.163.50.116	2011-11-30 07:00 AM	Comcast Cable
98.227.120.59	2011-11-30 06:05 AM	Comcast Cable
67.171.235.110	2011-11-30 12:00 AM	Comcast Cable
68.50.143.223	2011-11-30 02:55 AM	Comcast Cable
24.7.166.219	2011-11-30 06:04 AM	Comcast Cable
98.194.227.7	2011-11-30 12:08 AM	Comcast Cable
76.17.117.59	2011-11-30 02:15 AM	Comcast Cable
67.173.146.11	2011-12-02 04:20 AM	Comcast Cable
98.193.213.133	2011-12-02 07:51 AM	Comcast Cable
107.3.76.214	2011-12-02 12:10 AM	Comcast Cable
75.73.55.222	2011-12-03 12:16 AM	Comcast Cable
71.229.112.220	2011-12-03 07:04 AM	Comcast Cable
69.181.145.123	2011-12-05 09:08 AM	Comcast Cable
24.19.56.232	2011-12-05 11:00 AM	Comcast Cable
68.41.140.255	2011-10-29 06:29 PM	Comcast Cable
24.98.225.151	2011-10-30 05:41 PM	Comcast Cable
69.142.219.202	2011-10-31 07:51 PM	Comcast Cable
68.58.109.63	2011-10-31 02:39 AM	Comcast Cable
69.243.157.215	2011-10-31 04:43 PM	Comcast Cable
76.126.126.196	2011-10-31 07:25 AM	Comcast Cable
68.58.67.157	2011-11-01 10:04 PM	Comcast Cable
76.102.43.86	2011-11-01 04:36 AM	Comcast Cable
67.189.45.85	2011-11-01 10:55 PM	Comcast Cable
174.54.128.120	2011-11-02 03:40 AM	Comcast Cable
24.218.27.126	2011-11-02 03:09 AM	Comcast Cable
98.239.104.42	2011-11-04 01:45 AM	Comcast Cable
24.20.246.60	2011-11-04 06:18 AM	Comcast Cable
24.98.223.61	2011-11-04 03:39 AM	Comcast Cable
98.193.16.225	2011-11-04 11:27 AM	Comcast Cable
68.58.237.61	2011-11-04 03:02 PM	Comcast Cable

174.52.169.57	2011-11-05 11:39 PM	Comcast Cable
98.213.94.178	2011-11-05 12:39 PM	Comcast Cable
76.117.135.143	2011-11-05 08:34 AM	Comcast Cable
24.61.15.202	2011-11-05 05:54 PM	Comcast Cable
98.201.101.34	2011-11-05 09:20 PM	Comcast Cable
98.249.9.45	2011-11-05 06:42 PM	Comcast Cable
50.131.14.187	2011-11-05 07:43 AM	Comcast Cable
71.193.222.32	2011-11-05 06:45 AM	Comcast Cable
76.17.195.101	2011-11-06 08:41 AM	Comcast Cable
24.98.33.22	2011-11-06 07:17 AM	Comcast Cable
71.59.189.44	2011-11-06 11:21 AM	Comcast Cable
24.126.76.103	2011-11-06 08:56 PM	Comcast Cable
98.197.198.185	2011-11-06 08:55 PM	Comcast Cable
69.181.50.105	2011-11-07 05:20 AM	Comcast Cable
75.69.11.68	2011-11-07 03:14 AM	Comcast Cable
71.59.157.103	2011-11-07 09:43 AM	Comcast Cable
98.201.150.142	2011-11-07 12:36 AM	Comcast Cable
67.168.212.190	2011-11-08 01:16 AM	Comcast Cable
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71.237.113.17	2011-11-08 08:59 AM	Comcast Cable
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67.189.147.8	2011-11-08 02:49 PM	Comcast Cable
76.28.213.253	2011-11-08 09:27 PM	Comcast Cable
174.62.115.130	2011-11-13 05:24 AM	Comcast Cable
98.239.153.107	2011-11-13 03:27 AM	Comcast Cable
67.180.238.194	2011-11-13 06:36 AM	Comcast Cable
71.202.41.139	2011-11-13 07:44 AM	Comcast Cable
76.109.81.99	2011-11-13 03:13 AM	Comcast Cable
67.191.188.43	2011-11-13 03:02 AM	Comcast Cable
68.35.209.158	2011-11-16 03:38 AM	Comcast Cable
76.103.61.49	2011-11-29 11:37 PM	Comcast Cable
98.229.113.74	2011-11-29 11:34 PM	Comcast Cable
76.112.145.119	2011-11-29 11:24 PM	Comcast Cable
68.54.229.4	2011-11-29 11:43 PM	Comcast Cable
98.218.1.186	2011-11-29 05:30 PM	Comcast Cable
24.3.21.138	2011-11-29 04:50 PM	Comcast Cable
76.108.170.231	2011-11-29 03:50 PM	Comcast Cable
76.100.123.194	2011-11-29 11:17 PM	Comcast Cable
98.253.50.25	2011-11-29 05:33 PM	Comcast Cable
71.60.188.195	2011-11-29 05:30 PM	Comcast Cable
98.248.228.128	2011-11-30 11:18 AM	Comcast Cable



76.19.161.234	2011-11-30 11:13 AM	Comcast Cable
98.212.194.179	2011-11-30 09:14 AM	Comcast Cable
24.18.34.196	2011-11-30 06:40 AM	Comcast Cable
174.48.250.231	2011-11-30 05:49 AM	Comcast Cable
98.240.67.40	2011-11-30 05:28 AM	Comcast Cable
24.3.18.180	2011-11-30 09:13 AM	Comcast Cable
67.160.29.205	2011-11-30 07:11 AM	Comcast Cable
98.220.23.140	2011-11-30 06:56 AM	Comcast Cable
68.84.104.102	2011-11-30 12:22 AM	Comcast Cable
50.129.226.185	2011-11-30 12:00 AM	Comcast Cable
76.115.75.141	2011-11-30 02:55 AM	Comcast Cable
98.232.185.114	2011-11-30 02:30 AM	Comcast Cable
76.112.211.92	2011-11-30 02:24 AM	Comcast Cable
68.40.104.242	2011-11-30 05:11 AM	Comcast Cable
67.172.134.150	2011-11-30 03:45 AM	Comcast Cable
76.16.251.122	2011-11-30 03:12 AM	Comcast Cable
98.245.246.108	2011-11-30 01:24 AM	Comcast Cable
174.52.151.246	2011-11-30 01:14 AM	Comcast Cable
24.17.15.19	2011-11-30 12:43 AM	Comcast Cable
69.245.1.182	2011-11-30 02:15 AM	Comcast Cable
98.194.207.194	2011-11-30 02:01 AM	Comcast Cable
98.223.170.193	2011-11-30 01:39 AM	Comcast Cable
67.172.122.15	2011-12-01 04:42 AM	Comcast Cable
98.249.104.170	2011-12-01 04:17 AM	Comcast Cable
98.245.240.72	2011-12-01 03:43 AM	Comcast Cable
76.30.123.49	2011-12-01 12:18 PM	Comcast Cable
67.169.19.241	2011-12-01 09:41 AM	Comcast Cable
69.251.152.48	2011-12-01 09:12 AM	Comcast Cable
107.3.135.198	2011-12-01 01:09 PM	Comcast Cable
24.12.140.136	2011-12-02 09:46 PM	Comcast Cable
98.243.215.85	2011-12-02 03:29 PM	Comcast Cable
98.230.56.188	2011-12-02 03:51 AM	Comcast Cable
69.143.25.65	2011-12-02 12:03 AM	Comcast Cable
24.23.244.81	2011-12-04 08:59 PM	Comcast Cable
24.62.60.212	2011-12-05 03:30 AM	Comcast Cable
98.228.0.139	2011-12-05 12:00 AM	Comcast Cable
174.58.6.21	2011-12-07 10:44 AM	Comcast Cable
67.173.54.67	2011-10-07 12:07 AM	Comcast Cable
24.118.24.199	2011-10-10 12:45 PM	Comcast Cable
67.176.168.10	201-10-13 01:05 AM	Comcast Cable
98.242.186.85	2011-10-14 12:25 AM	Comcast Cable
75.65.59.254	2011-10-14 05:05 AM	Comcast Cable

71.200.160.48	2011-10-23 07:51 AM	Comcast Cable
76.113.247.188	2011-10-26 12:00 AM	Comcast Cable
71.59.187.17	2011-10-26 08:32 PM	Comcast Cable
76.118.202.2	2011-10-29 01:10 AM	Comcast Cable
68.83.249.180	2011-11-22 03:55 AM	Comcast Cable
76.109.154.248	2011-11-22 09:02 PM	Comcast Cable
67.186.163.136	2011-11-23 07:52 PM	Comcast Cable
98.232.194.205	2011-11-23 09:09 PM	Comcast Cable
50.131.16.215	2011-11-24 02:40 PM	Comcast Cable
24.17.153.170	2011-11-26 02:27 AM	Comcast Cable
67.170.208.34	2011-11-26 05:44 AM	Comcast Cable
71.204.186.169	2011-11-26 07:18 AM	Comcast Cable
76.123.3.176	2011-11-26 09:16 PM	Comcast Cable
76.107.7.55	2011-11-27 01:40 AM	Comcast Cable
71.236.187.64	2011-11-27 10:55 AM	Comcast Cable
67.184.105.187	2011-11-29 11:17 PM	Comcast Cable
24.21.246.25	2011-11-30 01:01 AM	Comcast Cable
68.48.249.91	2011-12-01 01:50 AM	Comcast Cable
24.218.28.170	2011-12-04 12:28 AM	Comcast Cable
76.103.9.149	2011-12-05 02:12 AM	Comcast Cable
71.229.144.51	2011-12-06 03:19 PM	Comcast Cable
76.98.245.194	2011-11-29 11:10 PM	Comcast Cable
67.160.219.73	2011-11-29 11:26 PM	Comcast Cable
76.24.113.211	2011-11-29 11:18 PM	Comcast Cable
24.245.40.122	2011-11-29 03:20 PM	Comcast Cable
68.35.68.74	2011-11-29 04:52 PM	Comcast Cable
24.7.178.30	2011-11-30 06:30 PM	Comcast Cable
24.131.19.11	2011-11-30 10:05 AM	Comcast Cable
76.98.254.35	2011-11-30 09:40 AM	Comcast Cable
67.164.32.143	2011-11-30 05:07 AM	Comcast Cable
68.32.136.153	2011-11-30 12:50 AM	Comcast Cable
50.133.225.38	2011-11-30 03:02 AM	Comcast Cable
98.228.50.9	2011-11-30 12:07 AM	Comcast Cable
24.7.166.219	2011-11-30 06:08 AM	Comcast Cable
71.192.175.9	2011-11-30 08:42 AM	Comcast Cable
68.63.66.194	2011-12-01 04:14 AM	Comcast Cable
68.36.122.151	2011-12-01 04:43 AM	Comcast Cable
67.171.235.110	2011-12-01 06:17 PM	Comcast Cable
24.98.32.24	2011-12-02 08:18 AM	Comcast Cable
76.21.33.226	2011-12-02 10:55 AM	Comcast Cable
98.230.56.188	2011-12-02 02:40 AM	Comcast Cable
71.61.18.14	2011-12-02 03:11 PM	Comcast Cable

66.41.167.160	2011-12-02 09:45 PM	Comcast Cable
98.200.146.249	2011-12-02 12:25 AM	Comcast Cable
98.220.10.146	2011-12-03 08:42 AM	Comcast Cable
67.173.52.14	2011-12-03 11:27 AM	Comcast Cable
68.53.80.60	2011-12-03 12:08 PM	Comcast Cable
66.56.20.172	2011-12-03 11:22 PM	Comcast Cable
66.30.61.35	2011-12-03 10:38 PM	Comcast Cable
75.73.53.66	2011-12-03 02:46 AM	Comcast Cable
71.235.47.88	2011-12-03 07:02 AM	Comcast Cable
24.4.36.255	2011-12-04 12:00 AM	Comcast Cable

Host IP address	Hit Date(UTC)	ISP
174.62.77.249	2012.01.30 11:41 PM	Comcast Cable
71.201.68.36	2012.01.30 05:21 PM	Comcast Cable
76.127.138.192	2012.01.31 09:28 AM	Comcast Cable
71.227.173.75	2012.02.01 07:11 AM	Comcast Cable
174.61.160.104	2012.02.01 11:46 AM	Comcast Cable
76.103.91.101	2012.02.01 12:06 PM	Comcast Cable
76.26.8.170	2012.02.01 01:31 PM	Comcast Cable
98.211.44.146	2012.02.01 01:57 AM	Comcast Cable
68.48.190.95	2012.02.01 03:01 AM	Comcast Cable
71.232.232.68	2012.02.01 01:54 PM	Comcast Cable
68.62.201.160	2012.02.01 09:47 AM	Comcast Cable
98.201.135.200	2012.02.01 04:52 AM	Comcast Cable
71.233.55.147	2012.02.01 06:06 AM	Comcast Cable
98.201.93.204	2012.02.01 05:33 PM	Comcast Cable
98.210.153.137	2012.02.02 10:24 AM	Comcast Cable
174.55.183.118	2012.02.02 06:02 PM	Comcast Cable
76.98.205.144	2012.02.02 06:55 AM	Comcast Cable
67.180.9.72	2012.02.02 10:44 AM	Comcast Cable
76.112.234.27	2012.02.02 05:18 AM	Comcast Cable
66.41.70.233	2012.02.02 08:27 AM	Comcast Cable
98.228.234.202	2012.02.02 03:39 AM	Comcast Cable
75.64.63.167	2012.02.02 06:19 AM	Comcast Cable
50.138.14.18	2012.02.02 07:13 PM	Comcast Cable
98.201.173.184	2012.02.02 03:42 PM	Comcast Cable
71.62.39.126	2012.02.02 04:06 PM	Comcast Cable
67.173.176.20	2012.02.02 02:50 AM	Comcast Cable
67.180.246.181	2012.02.03 05:45 AM	Comcast Cable
67.190.219.254	2012.02.03 12:13 PM	Comcast Cable
50.135.123.88	2012.02.03 01:57 PM	Comcast Cable
50.138.90.193	2012.02.03 10:54 PM	Comcast Cable
71.193.238.135	2012.02.03 10:25 AM	Comcast Cable
69.248.163.60	2012.02.03 05:38 PM	Comcast Cable
71.204.180.24	2012.02.03 03:19 PM	Comcast Cable
24.7.12.185	2012.02.03 07:34 AM	Comcast Cable

24.99.129.129	2012.02.04 08:55 AM	Comcast Cable
98.194.139.147	2012.02.04 08:25 AM	Comcast Cable
75.72.36.80	2012.02.04 01:23 PM	Comcast Cable
76.21.212.251	2012.02.04 06:31 AM	Comcast Cable
24.129.41.159	2012.02.04 05:11 AM	Comcast Cable
76.31.236.19	2012.02.04 12:58 AM	Comcast Cable
24.20.43.72	2012.02.04 03:17 AM	Comcast Cable
24.118.49.154	2012.02.04 08:34 AM	Comcast Cable
174.51.15.224	2012.02.04 09:20 AM	Comcast Cable
67.170.155.37	2012.02.04 05:16 AM	Comcast Cable
24.7.202.229	2012.02.04 09:32 AM	Comcast Cable
173.164.198.6	2012.02.04 09:15 AM	Comcast Business Communications
24.1.206.5	2012.02.04 05:26 AM	Comcast Cable
71.227.177.203	2012.02.05 09:16 AM	Comcast Cable
24.99.103.130	2012.02.05 09:16 PM	Comcast Cable
75.69.193.166	2012.02.05 05:49 PM	Comcast Cable
98.207.115.124	2012.02.05 03:41 AM	Comcast Cable
69.245.21.74	2012.02.05 04:28 PM	Comcast Cable
71.63.238.74	2012.02.05 07:07 AM	Comcast Cable
24.0.77.161	2012.02.05 12:54 AM	Comcast Cable
75.151.58.93	2012.02.05 11:15 AM	Comcast Business Communications
174.59.37.205	2012.02.05 01:52 PM	Comcast Cable
68.61.0.136	2012.02.05 10:20 PM	Comcast Cable
76.121.187.92	2012.02.06 07:52 PM	Comcast Cable
24.15.193.98	2012.02.06 12:30 AM	Comcast Cable
68.55.186.48	2012.02.06 06:19 AM	Comcast Cable
71.224.159.15	2012.02.06 09:34 PM	Comcast Cable
71.206.160.198	2012.02.06 05:58 PM	Comcast Cable
24.128.245.101	2012.02.07 11:36 PM	Comcast Cable
68.33.182.81	2012.02.07 05:04 AM	Comcast Cable
68.61.68.170	2012.02.07 03:00 AM	Comcast Cable
68.38.250.1	2012.02.07 05:38 AM	Comcast Cable
67.182.212.69	2012.02.07 05:37 AM	Comcast Cable
71.206.202.23	2012.02.07 06:40 AM	Comcast Cable
67.177.4.174	2012.02.08 05:37 AM	Comcast Cable

67.161.186.120	2012.02.08 02:53 PM	Comcast Cable
24.128.189.32	2012.02.08 03:51 AM	Comcast Cable
68.33.189.172	2012.02.08 07:48 PM	Comcast Cable
98.210.123.62	2012.02.08 08:49 PM	Comcast Cable
24.61.139.74	2012.02.08 03:43 AM	Comcast Cable
76.21.212.70	2012.02.08 05:39 AM	Comcast Cable
98.252.84.194	2012.02.09 12:31 AM	Comcast Cable
68.63.139.38	2012.02.09 12:07 AM	Comcast Cable
24.22.29.108	2012.02.09 03:07 PM	Comcast Cable
98.254.195.114	2012.02.09 07:29 PM	Comcast Cable
174.48.171.241	2012.02.09 10:27 PM	Comcast Cable
76.109.183.215	2012.02.09 07:23 PM	Comcast Cable
67.185.16.254	2012.02.10 03:50 PM	Comcast Cable
71.204.157.168	2012.02.10 02:33 PM	Comcast Cable
24.10.225.69	2012.02.10 09:36 PM	Comcast Cable
76.21.248.109	2012.02.10 11:38 PM	Comcast Cable
67.175.162.89	2012.02.10 04:03 AM	Comcast Cable
69.251.206.240	2012.02.10 10:14 PM	Comcast Cable
71.197.169.37	2012.02.10 12:03 AM	Comcast Cable
76.103.49.147	2012.02.10 12:31 AM	Comcast Cable
98.252.146.23	2012.02.10 04:03 AM	Comcast Cable
76.115.101.170	2012.02.10 04:32 AM	Comcast Cable
76.115.56.111	2012.02.10 05:43 AM	Comcast Cable
68.35.247.227	2012.02.10 07:27 AM	Comcast Cable
71.197.66.161	2012.02.10 06:48 PM	Comcast Cable
24.20.218.62	2012.02.10 06:27 PM	Comcast Cable
67.174.199.102	2012.02.10 04:34 AM	Comcast Cable
75.73.80.254	2012.02.10 09:36 AM	Comcast Cable
24.22.72.26	2012.02.10 12:34 AM	Comcast Cable
76.24.26.177	2012.02.11 05:13 AM	Comcast Cable
98.202.12.122	2012.02.11 12:21 PM	Comcast Cable
75.68.235.221	2012.02.11 01:20 PM	Comcast Cable
98.195.122.221	2012.02.11 11:29 PM	Comcast Cable
98.244.182.8	2012.02.11 05:04 AM	Comcast Cable
71.196.156.78	2012.02.11 03:24 AM	Comcast Cable

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76.120.135.114	2012.02.11 03:14 PM	Comcast Cable
24.130.112.113	2012.02.11 12:41 AM	Comcast Cable
98.204.153.165	2012.02.11 01:32 PM	Comcast Cable
68.36.169.204	2012.02.11 09:53 PM	Comcast Cable
68.49.52.196	2012.02.11 03:39 PM	Comcast Cable
68.50.140.209	2012.02.11 06:13 AM	Comcast Cable
76.125.18.166	2012.02.11 03:01 PM	Comcast Cable
24.62.101.33	2012.02.12 01:24 PM	Comcast Cable
24.218.146.114	2012.02.12 06:30 AM	Comcast Cable
24.16.101.128	2012.02.12 05:02 AM	Comcast Cable
173.12.98.230	2012.02.12 07:47 PM	Comcast Business Communications
50.129.10.239	2012.02.12 08:59 PM	Comcast Cable
24.245.3.14	2012.02.12 11:14 PM	Comcast Cable
71.59.242.98	2012.02.12 12:55 AM	Comcast Cable
98.252.165.91	2012.02.12 02:46 AM	Comcast Cable
69.181.54.185	2012.02.12 07:24 PM	Comcast Cable
24.61.187.110	2012.02.13 03:29 AM	Comcast Cable
107.3.168.14	2012.02.13 12:20 AM	Comcast Cable
98.219.56.42	2012.02.13 03:14 AM	Comcast Cable
71.59.7.29	2012.02.13 08:59 AM	Comcast Cable
24.7.123.209	2012.02.13 08:18 AM	Comcast Cable
98.197.116.85	2012.02.14 01:25 PM	Comcast Cable
67.191.65.135	2012.02.14 04:02 PM	Comcast Cable
67.162.194.242	2012.02.14 10:53 PM	Comcast Cable
24.18.118.63	2012.02.14 11:55 PM	Comcast Cable
174.55.165.113	2012.02.14 09:37 AM	Comcast Cable
70.89.66.61	2012.02.14 05:50 PM	Comcast Business Communications
67.186.41.198	2012.02.15 03:53 AM	Comcast Cable
68.52.5.169	2012.02.15 07:21 AM	Comcast Cable
75.145.115.77	2012.02.15 05:53 AM	Comcast Business Communications
98.242.218.223	2012.02.15 09:06 AM	Comcast Cable
24.23.241.112	2012.02.15 05:44 AM	Comcast Cable
98.234.26.211	2012.02.15 04:25 PM	Comcast Cable
76.97.48.93	2012.02.15 08:50 PM	Comcast Cable
98.208.8.233	2012.02.15 01:19 AM	Comcast Cable

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76.22.60.198	2012.02.15 11:04 PM	Comcast Cable
67.167.163.207	2012.02.15 02:53 AM	Comcast Cable
67.161.178.225	2012.02.15 12:00 AM	Comcast Cable
24.9.232.102	2012.02.15 02:27 AM	Comcast Cable
98.239.88.189	2012.02.15 07:54 AM	Comcast Cable
24.21.128.122	2012.02.15 07:15 AM	Comcast Cable
67.173.228.11	2012.02.16 09:42 PM	Comcast Cable
69.181.60.100	2012.02.16 08:15 AM	Comcast Cable
71.228.233.235	2012.02.16 06:09 AM	Comcast Cable
71.238.52.18	2012.02.16 01:12 AM	Comcast Cable
98.244.55.162	2012.02.16 08:51 AM	Comcast Cable
71.197.96.239	2012.02.16 09:48 PM	Comcast Cable
98.246.240.66	2012.02.16 11:56 PM	Comcast Cable
24.5.42.67	2012.02.16 08:09 PM	Comcast Cable
68.82.158.160	2012.02.16 01:33 PM	Comcast Cable
71.204.188.114	2012.02.16 11:09 PM	Comcast Cable
75.65.6.49	2012.02.16 03:50 PM	Comcast Cable
76.113.208.75	2012.02.16 11:38 PM	Comcast Cable
76.99.55.76	2012.02.16 08:42 AM	Comcast Cable
98.218.1.81	2012.02.16 09:11 AM	Comcast Cable
75.149.178.34	2012.02.16 08:09 AM	Comcast Business Communications
24.127.171.241	2012.02.16 04:08 PM	Comcast Cable
50.78.253.49	2012.02.16 04:13 PM	Comcast Business Communications
174.48.120.105	2012.02.16 11:18 PM	Comcast Cable
76.108.120.176	2012.02.16 12:24 AM	Comcast Cable
98.235.129.242	2012.02.17 04:01 AM	Comcast Cable
67.175.52.165	2012.02.17 09:42 AM	Comcast Cable
67.164.191.53	2012.02.17 09:06 AM	Comcast Cable
24.7.2.214	2012.02.17 07:25 AM	Comcast Cable
76.103.80.176	2012.02.17 10:14 AM	Comcast Cable
65.96.164.225	2012.02.17 09:57 AM	Comcast Cable
24.147.161.203	2012.02.17 09:51 AM	Comcast Cable
98.233.221.104	2012.02.17 03:20 AM	Comcast Cable
24.1.147.209	2012.02.17 05:48 AM	Comcast Cable
24.13.158.145	2012.02.17 07:26 AM	Comcast Cable



98.244.207.87  
76.21.208.98

2012.02.17 12:42 AM  
2012.02.17 01:18 PM

Comcast Cable  
Comcast Cable

**FILED**

17 APR 2012 03:46 pm

**Civil Administration****J. EVERS**

**In the Court of Common Pleas of Philadelphia  
Civil Trial Division**

Liberty Media Holdings, LLC, <i>Plaintiff,</i>	Jury Trial Demanded
v.	Term 2012
John Does I-441, <i>Defendants.</i>	No.

**Order.**

Today, this \_\_\_\_\_ day of \_\_\_\_\_ 2012, this Court hereby orders that plaintiff's Motion for Leave to Take Pre-Complaint Discovery is granted.

In light of the Cable TV Privacy Act of 1984, 47 USC §551, plaintiff may issue a subpoena to internet service provider Comcast to obtain subscriber identification information relating to the IP addresses attached as EXHIBIT A to this Order.

Upon receipt of this subpoena, Comcast will provide notice of the subpoena to its subscribers under the Cable TV Privacy Act. Comcast will then turn over the information plaintiff requests after waiting 20 days, under the guidelines provided by Pa.R.Civ.P. 4009.21.

This Court has contemplated the Cable TV Privacy Act and this order specifically complies with the Act's requirements.

BY THE COURT:

\_\_\_\_\_  
, J.

By: A. Jordan Rushie  
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Attorneys for Plaintiff

**In the Court of Common Pleas of Philadelphia  
Civil Trial Division**

Liberty Media Holdings, LLC, <i>Plaintiff,</i>	Jury Trial Demanded
v.	Term 2012
John Does I-441, <i>Defendants.</i>	No.

**Motion for Hearing to Take Pre-Complaint Discovery  
Under Pa.R.Civ.P. 4003.8**

Plaintiff Liberty Media Holdings, LLC, though its attorney A. Jordan Rushie of Mulvihill & Rushie LLC, moves this honorable Court to grant its Motion for Leave to Take Pre-Complaint Discovery under Pa. R. Civ. P. 4008.3. Plaintiff states the following in support of its motion:

1. Plaintiff is a California LLC that produces and distributes adult films.
2. Plaintiff began this action on Tuesday, April 17, 2012, by filing a Writ of Summons against John Does I-441.
3. Plaintiff believes that defendants, John Does I-441, have illegally shared its content via the internet.
4. Defendants John Does I-441, to date, have been identified only by internet protocol (IP) addresses.

Liberty Media Holdings LLC v. John Does I-441  
*Motion for Leave to Take Pre-Complaint Discovery Under Pa.R.Civ.P. 4003.8*

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- 4.1. An IP address is a numerical label assigned to a device (like a computer) that participates in a computer network that uses the internet protocol for communication.
- 4.2. An IP address is a unique identifying number for a computer connection that is assigned by an internet service provider to an internet service subscriber. It is similar to a telephone number.
5. Plaintiff does not possess information identifying defendants other than 441 IP address.
6. To file a sufficient complaint against the Doe defendants, plaintiff must conduct pre-complaint discovery so it may:
  - 6.1. Identify defendants;
  - 6.2. Serve defendants; and
  - 6.3. Notify defendants of the claims against them.
7. Pa.R.Civ.P. 4003.8 provides that a plaintiff may obtain pre-complaint discovery where the information plaintiff seeks is material and necessary to the filing of the complaint. Furthermore, the rule requires that the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party.
8. In *McNeil v. Jordan*,<sup>1</sup> the Pennsylvania Supreme Court explained the standard for obtaining pre-complaint discovery:

To obtain pre-complaint discovery, a litigant should be required to demonstrate his good faith as well as probable cause that the information sought is both material and necessary to the filing of a complaint in a pending action. A plaintiff should describe with reasonable detail the materials sought, and state with

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<sup>1</sup> 586 Pa. 413, 443 (Pa. 2006). This standard was later codified in Rule 4003.8

Liberty Media Holdings LLC v. John Does 1-441  
*Motion for Leave to Take Pre-Complaint Discovery Under Pa.R.Civ.P. 4003.8*

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particularity probable cause for believing the information will materially advance his pleading, as well as averring that, but for the discovery request, he will be unable to formulate a legally sufficient pleading. Under no circumstance should a plaintiff be allowed to embark upon a "fishing expedition," or otherwise rely on an amorphous discovery process to detect a cause of action he lacks probable cause to anticipate prior to the pre-complaint discovery process under this standard. The reasonableness of a given request, as well as the existence of probable cause and the good faith of the party seeking discovery, are matters for the trial court to determine in the exercise of its sound discretion.

9. In this case, the John Doe defendants' identities are material and necessary to the filing of a complaint.
10. The defendants' identities are necessary to advance this case to the point where plaintiff may file a legally sufficient complaint; the defendants' identities are essential to name and properly serve them. Pre-complaint discovery is essential to learn the identities of the persons behind these IP addresses.
11. This is not a "fishing expedition" like that which the Supreme Court cautioned against in *McNeil*. In this case, plaintiff already possesses the IP addresses of those individuals who have downloaded and shared its content without permission.
12. This pre-complaint discovery request is reasonable. Plaintiff seeks leave to subpoena Comcast, an internet service provider, to learn the identities of the owners of the IP addresses that have downloaded and shared plaintiff's materials by downloading and sharing its content without making proper payment to plaintiff.

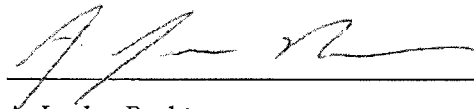
Liberty Media Holdings LLC v. John Does 1-441  
*Motion for Leave to Take Pre-Complaint Discovery Under Pa.R.Civ.P. 4003.8*

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13. Without the identities of the owners of the IP addresses already in plaintiff's possession, it cannot file a sufficient complaint, nor can it properly serve all defendants under Pa.R.Civ. P. 400.

WHEREFORE, plaintiff Liberty Media Holdings, LLC, requests that this Court grant its Motion for Leave to take Pre-Complaint Discovery and enter the proposed order that accompanies this Motion.

RESPECTFULLY SUBMITTED,



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**In the Court of Common Pleas of Philadelphia  
 Civil Trial Division**

Liberty Media Holdings, LLC, <i>Plaintiff,</i>	Jury Trial Demanded
v.	Term 2012
John Does 1-441, <i>Defendants.</i>	No.

**Plaintiff's Memorandum of Law Supporting its Motion for Leave  
 to Take Pre-Complaint Discovery Under Pa.R.Civ.P. 4003.8**

*Summary of the Argument: A plaintiff may obtain pre-complaint discovery where the information it seeks is material and necessary to file its complaint, and the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party. The Court may require a plaintiff requesting this pre-complaint discovery to particularly state how it will materially advance the preparation of a complaint. In this case, begun by a writ of summons, plaintiff has in its possession a list of Internet Protocol (IP) addresses of John Does who illegally downloaded and shared plaintiff's content. Plaintiff requests that this Court grant its motion so it may obtain the identities of John Does 1-441 from the internet service provider Comcast, and properly initiate legal proceedings to vindicate its rights against those who illegally shared plaintiff's content. Defendants will not be steamrolled or surprised by this discovery request, as the Cable TV Privacy Act of 1984 provides that any internet service provider notify customers before it discloses identifying information.*

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**1. Matter before the Court.**

Before this Court is plaintiff's request for leave of court to take pre-complaint discovery to serve a subpoena upon Comcast, a cable TV and internet service provider in Pennsylvania..

**2. Statement of Question Involved.**

Question: This is a case where pre-complaint discovery is necessary to identify the proper defendants against whom plaintiff may file a legally-sufficient complaint. In such a case, should the Court grant a request for leave of court to take pre-complaint discovery, that plaintiff may obtain the identities of the defendant to file a complaint?

Suggested Answer: Yes.

**3. Facts.**

**3.1. Introduction.**

A flash mob of ski-masked thieves barge into an electronics store. They run over to the DVD rack, stuff their pockets, then promptly run out the door. But these thieves weren't the sharpest tools in the shed — each was wearing a shirt with their home telephone number prominently printed on the back of it. And unfortunately for them, they didn't realize that a video camera in the store recorded the entire incident. The police, reviewing the surveillance footage, see the phone numbers, link the phone numbers to the thieves, and prosecute them for theft.

Now imagine that happened over the internet, and you understand precisely what happened here.

In this case, a swarm of individuals, believing they were anonymous, downloaded and shared plaintiff's content using BitTorrent, an on-line file-sharing protocol. While they thought their anonymity would shield them from being identified, they missed something.



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Just like the ski masked mob, each of the John Doe defendants in this case left behind the electronic equivalent of their phone number printed on the back of their shirt — their internet protocol (IP) address.<sup>2</sup>

With this motion, plaintiff asks this Court to provide it with the tools to electronically unmask the 441 John Doe defendants. Plaintiff desires to serve a subpoena on Comcast Cable to link the IP addresses to the individuals behind them, based on its belief that the users of these IP addresses downloaded and distributed plaintiff's content.

**3.2. The Parties — A Pornography Company and 441 Doe Defendants.**

Plaintiff Liberty Media Holdings is a California Limited Liability Company doing business as CORBIN FISHER®. Liberty Media produces, markets, and distributes adult entertainment products, including Internet website content, videos, DVDs, photographs, etc. Plaintiff operates and maintains a website by and through which individuals who pay a monthly subscription fee can view its photographic and audiovisual works.

Defendant Does 1-441 are individuals whose true names and addresses are unknown to Plaintiff. These Doe defendants duplicated and distributed unauthorized and infringing copies of plaintiff's motion pictures. Plaintiff has obtained the internet protocol addresses assigned to the individual defendants.

Plaintiff can only further identify the individuals who downloaded and shares plaintiff's material by using pre-complaint discovery.

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<sup>2</sup> An IP address is similar to a telephone number. It is a numerical label assigned to any device (like a computer or printer) that participates in a computer network that uses the internet protocol for communication. It is an identifier that links internet communication to the individual responsible for the internet account.

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### **3.3. Plaintiff's Request for Pre-Complaint Discovery.**

As part of this pre-complaint discovery investigation, plaintiff intends to subpoena Comcast, an internet service provider, to determine the identity of each internet subscriber assigned the corresponding IP address on the date and time of infringement.

The information which plaintiff will request in subpoenas to be directed to Comcast is governed by 47 U.S.C. §551 (The Cable TV Privacy Act of 1984). The Cable TV Privacy Act prohibits cable operators from disclosing a subscriber's identifying information without either 1) the subscriber's express consent; or 2) a court order that specifically authorizes the disclosure.<sup>3</sup>

Accordingly, plaintiff requests that this Court issue the attached order instructing Comcast Cable to produce all documents or information sufficient to identify the user or users of the respective IP addresses as listed in Exhibit A during the corresponding dates and times.

Additionally, plaintiff asks permission to conduct pre-complaint discovery on each user identified by these internet service providers to determine whether the actual subscriber performed the acts complained of, or it was some other individual with access to the subscriber's internet connection.

### **3.4. Internet Service Providers, Internet Protocol Addresses, and How This Court Will Help Unmask the Defendants.**

The infringement and other wrongful acts at issue in this action occurred online. In order execute the illegal acts complained of, a user must connect to the internet.

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<sup>3</sup> The Act requires the ISP notify the subscriber of any such order. See 47 U.S.C. § 551(c)(2)(B).

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Individuals gain access to the internet through an internet service provider (ISP). When an ISP provides internet access to a subscriber, it does so through a modem located at the subscriber's home or office. Each time the subscriber accesses the Internet, the ISP provides a unique number to the subscriber called an Internet protocol (IP) address. This is somewhat akin to a telephone number. The IP address for a subscriber may stay the same (a static IP address) or it may change from time to time (a dynamic IP address). An ISP generally records the times and dates it assigns each IP address to a subscriber.

Internet theft of content relies on the ability to identify the computers to and from information streams, which users search and exchange files. The technology identifies those computers through the IP address from which the computer connects to the Internet. In this manner, plaintiff identified the IP addresses from which individuals connected to the internet to unlawfully access plaintiff's works, make electronic copies of those works, and further distribute those works.

Plaintiff recorded the exact date and time individuals used various IP addresses to access the internet to illegally download, copy, and redistribute plaintiff's copyrighted work.

Anyone can perform a simple search on public databases to determine which Internet access provider controls a specific IP address. Plaintiff now seeks to subpoena Comcast, an ISP, to determine the name and address of the subscribers to whom they assigned the various IP addresses recorded.

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### **3.5. Defendants Are Using BitTorrent to Steal Plaintiff's Works in a Virtual Flashmob Known as a Swarm.**

Defendants downloaded and shared plaintiff's material via BitTorrent. BitTorrent is a mechanism through which internet users may share data electronically, and it is a notorious vehicle for internet piracy. Digital motion pictures are among the many types of files shared by BitTorrent users.

Instead of the stereotypical ideal of an internet user downloading a file from a single source, the BitTorrent protocol allows users to join a **swarm**, a group of connections from which they may to download and upload from each other simultaneously.

The life cycle of a file shared using BitTorrent begins with just one individual — the initial propagator, sometimes called a **seed** user or **seeder**. The initial propagator intentionally elects to share a file with a torrent swarm. The original file, in this case, contains plaintiff's entire copyrighted work.

Other members of the swarm connect to the seed to download the file. This download creates an exact digital copy of plaintiff's copyrighted work on each of the downloaders' computers. As additional thieves request the same file, each additional thief joins the collective swarm, and each new thief receives the same or different pieces of the file from each other thief in the swarm who has already downloaded any part of the file.

Eventually, once the initial propagator has distributed each piece of the file to at least one other thief, so that together the pieces downloaded by members of the swarm comprises the whole motion picture when reassembled, the initial propagator may leave the swarm, and the remaining thieves can still obtain a full copy of the motion picture by exchanging the pieces of the motion picture that each one has.

Essentially, these swarms work as a virtual flash mob, working together to facilitate the theft and unauthorized sharing of plaintiff's

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works. Just as the courts hold the individuals in a mob of DVD thieves stealing DVDs from a brick-and-mortar store responsible for their theft, this court should allow plaintiff to proceed and hold the John Doe defendants responsible for theirs. The only difference here is the masked defendants are operating over the internet.

**3.6.Procedural Background and the Reasons for this Request for Pre-Complaint Discovery.**

On Tuesday, April 17, 2012, plaintiff filed an action by writ of summons against 441 John Doe defendants, who have so far been identified by IP address only. Plaintiff believes that these John Doe defendants are Comcast customers.

To properly identify and serve the defendants who illegally shared plaintiff's content, plaintiff must conduct pre-complaint discovery to subpoena the IP address holders' identities. Plaintiff files this motion and ask that this Court grant its request for leave to file pre-complaint discovery for the following reasons:

- A. Pre-complaint discovery is necessary in this case to obtain the information material and necessary to the filing of the complaint—specifically defendants' identities. Plaintiff cannot file a legally sufficient pleading without identifying the defendants as persons, rather than simply as IP addresses;
- B. This request is not a fishing expedition, nor is it meant to cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party. Once this Court grants plaintiff's motion, plaintiff will serve Comcast with a subpoena. Under the Cable TV Privacy Act of 1984 (47 USC §551), Comcast must notice the Doe defendants of the subpoena. After notice, Com-

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cast will provide plaintiff with the subscribers' identifying information;

- C. Defendants will not be steamrolled or surprised by this action. Under the Cable TV Privacy Act of 1984, 47 USC §551(c)(2)(b), a cable provider who provides identifying information regarding a customer must first provide notice to the subscriber before it discloses any such information. This includes internet service providers.

Plaintiff addresses each of these elements in turn in Argument.

#### **4. Argument.**

##### **4.1. Pre-complaint Discovery is Necessary to File a Legally Sufficient Complaint. Though this Discovery, Plaintiff Will Ascertain John Doe Defendants' Identities.**

Plaintiff requires pre-complaint discovery to learn defendants' identities, that it may properly serve them with civil process.

Plaintiff does not yet have any other identifying information of defendants other than IP address, which uniquely identify the John Doe defendants. To prosecute its claims to protect its intellectual property, plaintiff must learn the defendants' identities. These identities can be discerned by pre-complaint discovery.

Pre-complaint discovery is governed by Pa.R.Civ.P. 4003.8. Rule 4003.8 provides that a plaintiff may obtain pre-complaint discovery where (1) the information sought is material and necessary to the filing of the complaint; and (2) the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party.

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In *McNeil v. Jordan*,<sup>4</sup> the Pennsylvania Supreme Court explained the standard for obtaining pre-complaint discovery:

To obtain pre-complaint discovery, a litigant should be required to demonstrate his good faith as well as probable cause that the information sought is both material and necessary to the filing of a complaint in a pending action. A plaintiff should describe with reasonable detail the materials sought, and state with particularity probable cause for believing the information will materially advance his pleading, as well as averring that, but for the discovery request, he will be unable to formulate a legally sufficient pleading. ... The reasonableness of a given request, as well as the existence of probable cause and the good faith of the party seeking discovery, are matters for the trial court to determine in the exercise of its sound discretion.

In this case, the identities of the John Doe defendants is material and necessary to the filing of a complaint against them. Plaintiff seeks the identities of John Doe defendants that have so far been identified only by IP address. Once Comcast provides the identities of these defendants to the plaintiff, then plaintiff will be able to properly name and serve the defendants with process under Pa.R.Civ.P. 400. Furthermore, without this specific identifying information, plaintiff will be wholly unable to prosecute its claims for conversation against defendants.

This request is made in good faith, as plaintiff has already identified, by IP address, those defendants who have illegally downloaded and shared its content.

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<sup>4</sup> 586 Pa. 413, 443 (Pa. 2006). This standard was later codified in Rule 4003.8

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Additionally, there are no other practical measures plaintiff could take to identify the Doe defendants. Plaintiff is aware of no available information that would identify the infringing users, other than information maintained by their internet service provider. Because of the nature of internet transactions, plaintiff has no way of determining Doe defendants' identities except through a third-party subpoena.

Other courts have indicated that a plaintiff requesting early discovery to identify defendants should justify specific requests and explain how such requests will lead to identifying information about a defendant that would make service of process possible".<sup>5</sup> The process explained above shows precisely how plaintiff's request will lead to the identification of defendants that will make service possible.

Sometimes, the internet subscriber is not the proper defendant in an action like as this. Plaintiff may seek to depose and issue interrogatories to the internet subscriber identified by the ISPs to determine whether any specific subscriber is a proper defendant in this action. Plaintiff believes that pre-complaint discovery under Pa.R.Civ.P 4003.8 is the only proper method to made this determination.

Therefore, plaintiff respectfully requests that this Court finds that it has satisfied the Supreme Court's requirements for pre-complaint

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<sup>5</sup> *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 580 (N.D. Cal 1999). The Columbia court additionally explained that "[s]ervice of process can pose a special dilemma for plaintiffs in cases ... in which the tortious activity occurred entirely on-line." 185 F.R.D. at 580. For a further discussion of John Doe defendants, see *Gillespie v. Civiletti*, 629 F. 2d 637, 642 (9th Cir. 1980) ("As a general rule, the use of 'John Doe' to identify a defendant is not favored. However, situations arise ... where the identity of alleged defendants will not be known prior to the filing of a complaint. In such circumstances, the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds.") (internal citations omitted).



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Liberty Media Holdings, LLC	:	
	:	Docket No. 2:12-cv-04703-ER
Plaintiff	:	
	:	
vs.	:	
	:	
John Does, 1-265	:	<b>NOTICE OF DISMISSAL</b>
	:	
Defendants	:	

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), the plaintiff, Liberty Media Holdings, LLC, hereby voluntarily dismisses the above matter, without prejudice, as the opposing parties have not served an answer or a motion for summary judgment.

Respectfully Submitted,

**Mulvihill & Rushie, LLC**

/S/

Date: September 5, 2012

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**Certificate of Service**

I, A. Jordan Rushie, Esquire, served this notice of voluntary dismissal upon the following parties:

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Dated: September 5, 2012